(22,677.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 601.

GEORGE T. SIMPSON ET AL., APPELLANTS,

vs.

WILLIAM SHILLABER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Præcipe for Return to United States Supreme Court.

To the Clerk of the Above Named Court:

Please make a return to the United States Supreme Court and include therein the following—viz:—

Bill of Complaint.
Præcipe for Chancery Subpœna.
Chancery Subpœna.
Temporary Restraining Order.
Order Continuing Hearing.
App. Geo. W. Seevers & J. I. Dille for Ry. Co.
App. Rd. & Wh. Commission.
App. E. T. Young.
Motion to dismiss as to E. T. Young.
Separate Answer M. & St. L. Ry. Co.
Motion to dismiss Temporary Inj. as to E. T. Young.
Motion to Dischg. Restraining Order as to Rd. & Wh. Commission.
Order Denying Motion to dismiss bill as to E. T. Young.
Order denying Motion to dismiss order to show cause as to Rd. & Wh. Commission.
Hearing on Order to Show Cause.
Hearing on Order to Show Cause for Temporary Inj. to issue continued.
Order continued on Restraining Order in force.
Order continuing order to show cause to July 16th.
Order continuing order to show cause for temporary Injunction to July 16th.
Order Continuing Order to Show Cause to Sept. 23rd.
Opinion on Motion to Dismiss Order to Show Cause as to E. T. Young (denied).
Order & Amendment to Bill.
Demurrer of Rd. & Wh. Commission.
Demurrer of E. T. Young.
Stipulation setting demurrers down for hearing.
Answer I. B. Mills, et al.
Record of Hearing.
Order Overruling Demurrers.
Order for Temporary Injunction.
Temporary Injunction.
Decision on Application for Temporary Injunction.

DATA CUT OFF IN CENTER

Answer of E. T. Young.
Replication to Answer of E. T. Young.
Replication to Answer of Commissioners.
b Notice of Motion for Appt. Special Master.
Order appointing Master.
Oath of Special Master.
Stipulation and Order substituting defendants.
App. G. T. Simpson for certain defendants.
Order in re payment of costs.
Master's report.
Record of Hearing on Master's report.
Application of Special Master for Fees and Order to Show Cause.
Objections of Attorney General to Master's fees.
Order.
Decision.
Decree.
Order Modifying Decision.
Record of Hearing on Application for Appeal.
Stipulation to file Abridged Copies 1907-8 & 9.
Order to file Abridged copies 1907, 8, and 9.
Abridged Copies certified separately.
Motion of Petition to Appeal.
Motion to Join in Appeal.
Petition for allowance of Appeal.
Order Allowing Appeal.
Assignments of Error and prayer for reversal.
Bond on Appeal.
Citation.
Clerk's Certificate.
Printed Copy of Testimony consisting of 7 volumes also 1 volume of Complainants' Exhibits and 1 volume of Defendants' Exhibits—
And Abridged copies of Reports of Railway Company to Railroad & Warehouse Commission of State of Minnesota.

GEORGE T. SIMPSON,
EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Appellants.
JARED HOW,
PIERCE BUTLER,
WILLIAM D. MITCHELL,
Solicitors for Appellee.

(Endorsed:) Præcipe for Return to U. S. Supreme Court. Filed May 10, 1911. Louise B. Trott, Clerk.

1 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 862.

WILLIAM SHILLABER
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America, for the District of Minnesota, Third Division, of the June Term of said Court, Held in said District in the Year of our Lord A. D. 1910.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 31st day of May, A. D. 1907, came the complainant above named by his solicitor, and of counsel and filed in the Clerk's office of said Court his bill of complaint in the words and figures following, to-wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

Præcipe for Chancery Subpœna.

To the Clerk of the Above-Named Court:

Please issue Chancery Subpœna for each of the above named defendants, returnable at July Rules, 1907, and deliver the same to the Marshal for service.

Dated May 31st, 1907.

HOW, BUTLER & MITCHELL,
Complainant's Solicitors.

Endorsement: Præcipe for Chancery Subpœna. Filed May 31, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

3 Circuit Court of the United States, District of Minnesota, Third Division.

Equity. No. 862.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al., Defendants.

Chancery Common Rule and Order Book.

MAY 31ST, 1907.

The Complainant having filed a bill of complaint in this cause on application of How, Butler & Mitchell, Solicitors, ordered, that a writ of subpœna issue as herein prayed for.

4 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Above District, Sitting in Equity:

Now comes your orator, William Shillaber, and brings this his bill of complaint, on behalf of himself and all of the stockholders of The Minneapolis and St. Louis Railroad Company who shall make themselves parties to and contribute to the expenses of this suit against The Minneapolis and St. Louis Railroad Company, a corporation organized and existing under the laws of the State of Minnesota, Edward T. Young, a citizen of the State of Minnesota and a resident of the County of Swift therein, and Ira B.
5 Mills, Charles F. Staples and William E. Young, who are each of them citizens of the State of Minnesota and residents of the County of Ramsey; and thereupon your orator alleges and complains:

I.

That your orator is a citizen and resident of the State of New York and an inhabitant of the Southern District of New York within the meaning of the statutes of the United States of America defining the jurisdiction of this Honorable Court, and on January 1, 1907, and for some considerable period prior to said date and since the first day of January, 1904, to the date hereof, has continuously been a holder of shares of preferred and common stock of said The Minneapolis and St. Louis Railroad Company.

II.

That the defendant, The Minneapolis and St. Louis Railroad Company, hereinafter for brevity called the "Railroad Company," is and has been for several years past a railroad corporation duly organized and existing under the laws of the State of Minnesota, and also through and by virtue of certain consolidation proceedings under the laws of the State of Iowa, and a citizen and resident of the State of Minnesota and an inhabitant of the District of Minnesota within the meaning of the statutes of the United States defining the jurisdiction of this Honorable Court.

The defendant Edward T. Young is the Attorney-General of the State of Minnesota, and a citizen and resident of the State of Minnesota, and an inhabitant of the District of Minnesota, Third Division, within the meaning of the statutes of the United
6 States of America defining the jurisdiction of this Honorable Court.

The defendants Ira B. Mills, Charles F. Staples and William E. Young are the members of and constitute the Railroad and Warehouse Commission, duly elected and acting as such under the general statutes of the State of Minnesota, and are citizens and residents of the State of Minnesota and inhabitants of the District of Minnesota, Third Division, within the meaning of the statutes of the United States defining the jurisdiction of this Honorable Court.

III.

This is a suit in equity arising under the Constitution of the United States for that your orator seeks to enjoin said defendant Railroad Company from publishing or adopting or continuing to observe or keep in force, if the same have been published or adopted, certain rates, tariffs and charges prescribed or set forth in two certain Acts of the Legislature of the State of Minnesota and a certain order of the Railroad and Warehouse Commission of said State, hereinafter specifically described, and to enjoin the other defendants herein and each of them from attempting in any manner to enforce the provisions of said acts or order or any of them, or from instituting any action or proceeding against said defendant Railroad Company, its officers, directors, agents or employés, on account of any violation thereof, for the reason that the said acts and order and each of them and all the tariffs, rates, charges, regulations, schedules and classifications therein assumed to be prescribed, and each of them, are violative of the Constitution of the United States.

The amount involved in this controversy is in the excess of the sum of two thousand dollars ($2,000), exclusive of interest, costs, and expenses.

7 IV.

For more than twelve (12) years last past the defendant Railroad Company has been the owner of and has operated certain lines of railroad in the State of Minnesota and in other States, more particularly described as a line of railroad extending from the City of Minneapolis in the State of Minnesota, southerly to and beyond the

State line between Minnesota and Iowa; thence into said State of Iowa to the City of Des Moines, Storm Lake and other points within the State of Iowa; and also from the Cities of St. Paul and Minnesota in the State of Minnesota to the City of Watertown in the State of South Dakota, and is now and for more than two years last past has been operating said road as a continuous line of railroad for the transportation of interstate traffic from the Cities of St. Paul and Minneapolis in the State of Minnesota into the State of Iowa and the State of South Dakota to the points hereinbefore named, and to a great number of other stations in said States intermediate upon said continuous line of railroad. Its system of railroads, including the said line and its branches, comprise about eight hundred (800) miles. All lines of said Railroad Company are connected with and operated as a part of the system of the defendant Railroad Company in the States of Minnesota, Iowa and South Dakota, and engaged in the transportation of passengers and freight interstate upon said lines; and all the property of the defendant Railroad Company and all its facilities owned, leased or employed are engaged in and made instruments of such interstate commerce, and the defendant Railroad Company and its property are subject to the control and regulation of the Congress of the United States and of the Interstate Commerce Commission as to its rates, fares and charges upon all its business so transacted and the proper management and operation thereof, as well as the reasonableness of its charges made therefor.

V.

On the sixth day of September 1906, the Railroad and Warehouse Commission of the State of Minnesota, assuming to act under and by virtue of the provisions of the statutes of said State made and published and thereafter duly served upon the defendant Railroad Company, an order entitled, "In the Matter of the Investigation of the Reasonableness of the Merchandise and Commodity Tariffs of Rates and Charges between Stations in the State of Minnesota on the Several Lines of Railroad," a copy of which order is hereto annexed, marked "Exhibit A" and is hereby made a part hereof.

VI.

The Legislature of the State of Minnesota at its session of 1907 passed an act which was approved on the fourth day of April, 1907, and is entitled, "An Act prescribing the Maximum Rate to be charged for the Transportation of Passengers upon Railroads within the State of Minnesota, providing for the Enforcement of the same and Penalties for the Violation thereof," a copy of which act is hereto annexed, marked "Exhibit B" and is hereby made a part hereof.

VII.

At the same session said Legislature of the State of Minnesota passed an act which was approved on the 18th day of April, 1907, and is entitled, "An Act relating to Railroad Freight rates, in the State of Minnesota and defining Certain Duties of the Railroad and

Warehouse Commission," a copy of which act is hereto annexed marked "Exhibit C" and is hereby made a part hereof.

9 VIII.

The defendant Railroad Company has published and put into effect, and now keeps and maintains in effect, the rates prescribed in said order of September 6, 1906, and in said act approved April 4, 1907, and threatens to publish and put into effect the rates prescribed in said act approved April 18, 1907, when said act shall become effective by virtue of the provisions and terms thereof.

Your orator alleges upon information and belief that the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, and other officials of the State of Minnesota or of counties or municipalities therein, and all persons charged with any duties by reason of said acts and order, are threatening to enforce the provisions thereof and of each of them, and to enforce the penalties in said acts and order respectively provided.

Your orator avers that the charges for the transportation of commodities heretofore made and charged by the defendant Railroad Company, and all the tariffs for the transportation of passengers, and all charges for the transportation of property and passengers in the State of Minnesota, as the same existed before the making of said order of September 6, 1906, and the enactment of said acts of April 4 and April 18, 1907, and as they had been in force for a period of several years before said acts and order came into effect, were low and none of them were unreasonably high and many are not now and have not been yielding a fair and reasonable return upon the investment upon said Railroad Company necessary to perform the services of said transportation.

That the tariff of charges for the transportation of all classes of freight and passengers as the same existed in the State of Minnesota upon the lines of the defendant Railroad Company prior to
10 the making of said order and the enactment of said acts, was not higher than it fairly should be as compared with the rates maintained and collected by the defendant Railroad Company in other States through which its line of railroad runs, as hereinbefore set out, nor is the same unreasonably high as compared with the rates fixed and charged by the defendant Railroad Company, for the transportation of interstate freight and passengers; but the said rates are, both in themselves and in comparison with the rates charged and imposed in other States and on interstate traffic, low, just fair and reasonable.

That the cost of handling traffic and transporting freight and passengers, and particularly the commodities mentioned in the act of April 18, 1907, of the State of Minnesota, as local traffic between stations, is greater than in other States through which the defendant railroad extends, and that the cost of fuel, which is a large factor in the cost of operating said railroad, is higher in the State of Minnesota than in other States in which the said line extends, except that in the State of South Dakota fuel is slightly higher than in the State of Minnesota; that the expense of handling short hauls of

traffic upon the defendant Railroad Company's lines within the State of Minnesota is much greater than the expense of handling interstate traffic which moves for a longer distance over its lines of railroad.

IX.

Your orator further avers that the expenses of maintaining and operating the lines of the defendant Railroad Company, both in the State of Minnesota and interstate, have largely increased during the eighteen (18) months or thereabouts last past; that the salaries and wages of its employees during such time have largely increased (the exact amount your orator is unable to state at the present
11 time), but avers that such increase has exceeded ten (10) per cent. within the same period; that the cost of lumber, ties, piling and bridge timber used in the construction, renewal and repairs of the line and property of the defendant Railroad Company, has increased within the said period from thirty-three (33) to forty (40) per cent.; and that within the same period the cost of steel rails and other materials generally used in railroad construction, renewals and repairs, has increased from thirty-three (33) to forty (40) per cent.; and that the cost of other materials and supplies has in the same period increased in about like proportion, and the general increase of cost of materials used in the construction, renewals and repairs of railroad properties in the section of the country wherein the railroad of the defendant Railroad Company is situated within the said time averages about the same proportion.

X.

That the taxes upon the railroad of the defendant Railroad Company have increased from year to year and particularly in the State of Minnesota, in which State the tax upon the defendant's railroad, assessed upon its entire gross earnings for the year 1906, was more than thirty-three (33) per cent. greater than that levied and collected by said State in the preceding year, or any previous year.

XI.

That although the railroad of the defendant Railroad Company is economically administered and operated, the expenses of operation and taxes consume about sixty-two (62) per cent. of its entire gross earnings; that notwithstanding said increased operating expenses, the increased cost of all materials entering into the cost of maintenance and repairs in every department of the railroad of the
12 defendant Railroad Company, the rates upon the line of railroad of said Company, and especially in the State of Minnesota, have decreased.

XII.

In view of the duty of the defendant Railroad Company to serve all the localities and communities upon its line of road, both within the State of Minnesota and in other States without discrimination, its practice has always been to make its tariffs upon a uniform principle or basis, disregarding State lines. Its rates are and have been

the same for similar distances upon local shipments either in Iowa, Minnesota or South Dakota, and upon interstate shipments in that territory. It is impossible to apply in any one of said States a materially different or lower plan, system or scale of tariffs upon local business in any of said States from that applied upon interstate business. No reduction could be made in the local rates in Minnesota without similar and corresponding reduction being made in the local rates in other States on the line of the defendant Railroad Company or in its interstate rates, since that company could not legally apply to stations beyond the Minnesota line a higher scale of rates than that applied to stations within the State. A great loss of revenue would thus be caused to the defendant Railroad Company upon its interstate traffic in addition to that immediately incident to the rates provided for within the State of Minnesota in said Acts and order hereinbefore referred to, and the reduction thus caused would deny the defendant Railroad Company a fair and reasonable income upon the money actually invested in its property and the value thereof and upon its stock and bonds representing the economical construction and equipment of its property, with the result that the property of said Railroad Company would be confiscated
13 and said Company deprived of its property without due process of law in violation of the Constitution of the United States.

As applied to the defendant Railroad Company, said acts and order operate directly upon interstate commerce and are regulations of such commerce in violation of the exclusive power granted to Congress by the Constitution of the United States.

XIII.

That the gross earnings of the defendant Railroad Company, from all freight traffic over its entire system for the fiscal year ending June 30, 1906, amounted to $2,550,563.35; and, if the maximum charges for the transportation of freight within the State of Minnesota, provided for in said order of September 6, 1906, and in said act of April 18, 1907, relating to the regulation of rates in respect to the transportation of freight, had been in force and effect during the said fiscal year ending June 30, 1906, the gross earnings from the transportation of freight on said lines of railroad of the defendant Railroad Company would have been decreased by not less than the sum of $225,000.00, and would have left no income whatever from freight earnings upon any of the stock of said railroad which in part represents its cost, and would have denied to your orator and other stockholders of the defendant Railroad Company any income whatever from said freight earnings upon the value of the railroad property so engaged in this commerce, both state and interstate.

XIV.

That the gross earnings of the defendant Railroad Company, from all passenger traffic over its entire system for the fiscal year ending June 30, 1906, amounted to $1,001,548.39; and, if the maximum

charges for the transportation of passengers within the State
14 of Minnesota, provided for in said act of April 4, 1907, relating to the regulation of rates in respect to the transportation of passengers, had been in force and effect during the said fiscal year ending June 30, 1906, the gross earnings from the transportation of passengers on said line of railroad of the defendant Railroad Company would have been decreased by not less than the sum of $92,000.00 and would have left no income whatever from passenger earnings upon any of the stock of said railroad which in part represents its cost, and would have denied to your orator and other stockholders of the defendant Railroad Company any income whatever from said passenger earnings upon the value of the railroad property so engaged in this commerce, both state and interstate.

XV.

Your orator further avers that the year ending June 30, 1906, being the time covered by the computation hereinbefore set forth was an exceptionally prosperous year for railroad companies in the State of Minnesota and in all the states in which the lines of the defendant Railroad Company extend, as hereinbefore set out, as well as a prosperous year for all other branches of industry.

That for a period of years beginning with the year 1903 the business of the Railroad Company was poor, the amount of commodities moved was low, and the revenues received were very much less per mile of track in the State of Minnesota than the revenues of the last year upon which the estimates and computations set out herein were made, and that the comparatively large receipts of the defendant Railroad Company at the present time are but temporary, and that such revenues do not necessarily or in fact represent the fair average earnings of the defendant railroad for a series of years.

15 Your orator further avers that, notwithstanding the prosperous condition of the country and the comparatively large business now being transacted by the defendant Railroad Company, said defendant does not now earn above the actual cost of economically operating the said lines of the railroad a fair and reasonable return upon the cost or valuation of its said railroad.

That the railroad of the defendant Railroad Company since it was built has at no time earned a fair, reasonable or just return to its stockholders or owners upon the actual cost or value thereof; that it has never earned in its most prosperous years to exceed two (2) per cent. upon its actual cost or value, and for many years it has earned very much less than that amount.

That upon its line of railroad in the State of Minnesota, if the business thereon entirely local to said State be solely considered, the defendant does not now receive a net revenue therefrom equal to the cost of operation of its line in said State, but, on the contrary, the said property of the defendant Railroad Company was used in the transportation of local State business without any return upon the value of the property engaged in the handling or transportation of said traffic.

XVI.

That the defendant Railroad Company had on June 30, 1906, and still has, a bonded indebtedness upon its property in the aggregate amounting to $19,565,000.00, which divided upon a basis of mileage would make the actual indebtedness upon the line in the State of Minnesota $31,635.00 per mile of track; that on said date it had and still has issued and outstanding $4,000,000.00 of preferred stock which upon a like mileage apportionment would place upon its lines in the State of Minnesota $6,335.00 per mile; that on said
16 date it had and still has issued and outstanding common stock which upon a like mileage apportionment would place upon its lines in the State of Minnesota $9,503.00 per mile; that the aggregate issues of bonds and preferred and common stock of the defendant Railroad Company, as hereinbefore recited, do not exceed the actual cost of the defendant's property, nor is such aggregate sum equal to the present actual value of the property or the amount it would cost to replace and equip it in its present condition.

XVII.

During the fiscal year of the defendant Railroad Company ending June 30, 1906, its gross earnings, as aforesaid, from passenger traffic were $1,001,548.39, and from the transportation of freight $2,550,563.55. Its gross earnings during said period from the transportation of mail and express were $162,568.78, and its miscellaneous earnings during said period were $11,984.78, making a total of $3,726,665.50 of gross earnings.

Its operating expenses during said period amounted to the sum of $2,143,727.97, exclusive of taxes, interest on funded debt or rentals. The said sum of $2,143,727.97 was made up as follows:

Maintenance of way and structures	$444,817.19
Maintenance of equipment	411,418.45
Conducting transportation	1,158,339.13
General expenses	129,153.20

The net earnings of the defendant Railroad Company during the said period were the sum of $1,582,937.53; its other income during said period was $259,731.75, making its total net income, exclusive of payment of taxes, interest on funded debt and rentals, $1,842,669.28.

For the said fiscal year ending June 30, 1906, the defendant Railroad Company paid for taxes $165,468.59, interest on
17 funded debt $1,095,932.04, and for rentals $165,238.70, making a total of $1,327,928.99, leaving for said year 1906 a surplus applicable for the payment of dividends on its preferred stock of $416,029.95.

As hereinbefore set forth, the gross earnings of the defendant Railroad Company for the fiscal year ending June 30, 1906, from all freight traffic would have been decreased by not less than the sum of $225,000.00 and its gross earnings for the same period from

all passenger traffic by not less than the sum of $92,000.00 had the rates for said transportation of passengers and freights been fixed during said period at the amounts provided in the aforesaid acts and order.

The operating expenses and taxes of the defendant Railroad Company for the ten ($10) months ending April 30, 1907, have been about $223,000.00 more than those for the corresponding ten (10) months of the previous year, while the gross earnings of the defendant Railroad Company for the same period of ten (10) months have increased only to the extent of $100,000.00, so that if the maximum charges for the transportation of passengers and freight prescribed in the acts and order hereinbefore referred to had been in effect during said period of time, the defendant Railroad Company would not have earned any sum whatever upon its capital stock, but its operations for the said ten months would have resulted in a deficit.

XVIII.

Your orator further alleges that under the Constitution of the United States and the Constitution of the State of Minnesota, and the various acts of Congress and the laws of the State of Minnesota, the defendant Railroad Company is entitled to earn a reasonable rate of interest and income upon its securities, or upon the cost or value of
18 its property engaged in said business; that all its said property is so engaged and it is impossible for the defendant Railroad Company to obey the provisions of the said acts or order or the provisions of any of them without depriving its stockholders of a reasonable income or of any income on part of its property which is guaranteed to it by the Constitution and laws aforesaid.

XIX.

Your orator further alleges that if the defendant Railroad Company is not prevented by injunction by this Honorable Court from putting into effect or continuing in effect the rates prescribed in said acts and order, the rates heretofore existing will of necessity, for the reasons hereinabove set forth, be reduced over the entire system of the defendant Railroad Company by such an amount that its revenues will be insufficient to pay its expenses and the carrying on of such business at the rates fixed by said acts and order in relation to charges for transportation of passengers and freight as above set forth will result in a continued loss to the defendant Railroad Company and its stockholders.

Your orator therefore alleges that the said rates set forth in said acts and order as aforesaid are unjust, unfair, unreasonable and confiscatory and deprive, or if enforced or continued in force will deprive, the defendant Railroad Company and your orator as a stockholder of such defendant and all its stockholders of its or their property without due process of law, and deprive it and them of the equal protection of the laws contrary to and in violation of the Constitution of the United States and the laws made pursuant thereto.

XX.

19 Your orator further avers that in and by said act of the State of Minnesota fixing passenger rates it was provided that the same should take effect May 1, 1907, and that in and by said act of the State of Minnesota fixing freight rates, it was provided that the same should take effect June 1, 1907, and that in and by said order of September 6, 1906, it was provided that the same should take effect within thirty (30) days; that if the rates fixed by said acts and order continue or are put into effect, the result of the operation of the Railroad Company thereunder will be to leave a large deficiency in its income and will leave the defendant Railroad Company with nothing whatever to pay dividends upon its stock of any class, or to make necessary improvements in its property and care for the maintenance thereof; and it will be uncertain whether the defendant Railroad Company will be able to pay from its earnings the amount of taxes assessed against its said line of railroad and, in addition, the interest upon its bonded debt.

The enforcement of said rates will result in serious loss and damage and possibly insolvency and bankruptcy to the defendant Railroad Company and in irreparable loss, damage and injury to your orator and to all other stockholders of the defendant Railroad Company, by reason of the depreciation in value of their stock which will result therefrom.

XXI.

That heretofore and on or about the twenty-third day of April, 1907, your orator duly made of the defendant Railroad Company and its Board of Directors a written request, of which a copy is hereto annexed marked "Exhibit D" and is hereby made a part hereof; that said request was laid before a meeting of the Directors of the defendant Railroad Company and a resolution was duly adopted by said

20 Board refusing to comply with the aforesaid request of your orator, and the said defendant refused to decline to put the rates provided for in said acts and order of the legislature of the State of Minnesota in respect to passenger and freight rates into effect; and the defendant further refused by proper legal proceedings to test the validity of such acts and order in the courts; and your orator was duly advised by the defendant of its aforesaid refusal.

This suit is not in any manner or to any extent a collusive one to confer on the Court of the United States jurisdiction of a case of which it could not otherwise have cognizance.

XXII.

Your orator further avers that if the defendant Railroad Company, its officers, directors, agents and employés shall cease obedience to the said order of September 6, 1906, and to the said act of April 4, 1907, the defendants, Ira B. Mills, Charles F. Staples and William E. Young, as members of the Railroad and Warehouse Commission of the State of Minnesota, and Edward T. Young, as Attorney-General of the State of Minnesota, in behalf of said Commission will institute proceedings by mandamus, or otherwise, against said Railroad

Company, its officers, directors, agents or employés, to enforce said order and act and all the provisions thereof, and threaten to and will take other proceedings against said company, its officers, directors, agents and employés, to the same end and for the same purpose.

That if said Railroad Company, its officers, directors, agents and employés shall fail or refuse to put into force and effect the tariff prescribed by the said act of April 18, 1907, hereinbefore referred to, said Edward T. Young, as Attorney-General, threatens to and will institute mandamus or other proceedings for the purpose of
21 enforcing said acts, and each thereof, and the provisions and penalties thereof.

XXIII.

Your orator further alleges that the defendant Railroad Company is now engaged in the operation of upwards of eight hundred miles of railroad in the States of Iowa, Minnesota and South Dakota; that in such operation it has in use great numbers of cars for the carriage of passengers and freight, and has in its employ engaged in such operation great numbers of employés; that it carries on an average 3,318 passengers and 6,482 tons of freight per day over the lines owned and operated by it; that under and by virtue of the acts of the State of Minnesota and the order of the Railroad and Warehouse Commission of said State, hereinbefore referred to, and the obligation of the defendant Railroad Company to carry such passengers and such freight as may be presented to it for carriage, it will be subjected to innumerable demands for the sale of tickets and the transportation of freight at the rates fixed by said acts and order; that on the refusal of the defendant Railroad Company to comply with such demands it may be subjected to numerous actions at law and to annoyance, litigation and loss by reason thereof, and the defendant Railroad Company and its officers and employés will become subject also to litigation and actions to enforce the penalties provided in said acts for failure to comply with the provisions thereof, and as a result the defendant Railroad Company will be put to great loss, damage, hindrance and annoyance in the transaction of its business, which it is entitled to carry on without such suits, litigations, actions, annoyance, hindrance, loss and damage, all to the serious and irreparable
22 loss, damage and injury of your orator and other holders of the preferred and common stock of the defendant Railroad Company.

In consideration whereof, and for as much as your orator is remediless in the premises by the strict rules of the common law, and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orator prays that said acts of the legislature of the State of Minnesota, and each of them, and said order of said Railroad and Warehouse Commission, be declared to be in violation of the Constitution of the United States, and therefore void and of no effect, so far as the defendant Railroad Company, its officers, directors, agents and employés are concerned, and that said defendant The Minneapolis and St. Louis Railroad Company, its officers, directors, agents and employés, be temporarily and permanently enjoined and restrained from continuing to observe

or keep in force the tariff fixed by said order of September 6, 1906, or from continuing to observe, keep, publish or adopt passenger rates set forth in the act of April 4, 1907, or from publishing or adopting the tariff set forth in the act of April 18, 1907, or from reducing its tariffs to the figures set forth in said last act.

That the said Edward T. Young, as Attorney-General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and William E. Young, as members of the Railroad and Warehouse Commission of the State of Minnesota, be temporarily and permanently restrained and enjoined from any attempt to compel the defendant Railroad Company to observe, publish, post or put in force said rates, or any of them, as fixed by said order of September 6, 1906, and further be restrained and enjoined from taking any action, step or proceeding against said Railroad Company, or any of its officers, direct-
23 ors, agents or employés, to enforce any penalties or remedies for the violation by said Railroad Company of said order of September 6, 1906.

That said Edward T. Young, as Attorney-General for the State of Minnesota, be temporarily and permanently enjoined and restrained from taking any action, step or proceeding against said Railroad Company, its officers, directors, agents or employés, to enforce the penalties and remedies specified in said acts of April 4, 1907, and April 18, 1907, or either of them.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States of America, to be issued out of and under the seal of this Honorable Court, directed to the said defendants, The Minneapolis and St. Louis Railroad Company, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, commanding them, and each of them, on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath (answer under oath being expressly waived) all and singular the premises, and to stand to and perform and abide by such order, direction and decree as may be made against them in the premises; and that, pending the final hearing of this cause, a temporary restraining order may be issued as above prayed, and your orator will ever pray, etc.

WILLIAM SHILLABER.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

STATE OF NEW YORK,
County of New York, ss:

William Shillaber, being duly sworn, deposes and says: That he is the complainant in the foregoing bill and has read the fore-
24 going bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those he believes it to be true.

WILLIAM SHILLABER.

Sworn to before me this 28th day of May, 1907.

[SEAL.] HENRY V. POOR,
Notary Public, New York County.

My commission expires March 30, 1908.

EXHIBIT "B."

"An act prescribing the maximum rate to be charged for transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof."

SECTION 1. No railroad company owning, operating or using a line of railroad within, or partly within, the State of Minnesota, shall charge or collect more than two (2) cents per mile for carrying, over its road on any trip wholly within this state, any passenger of twelve (12) years of age or over, together with baggage not exceeding one hundred and fifty (150) pounds in weight, or more than one (1) cent per mile for any such passenger under twelve (12) years of age, together with baggage not exceeding seventy-five (75) pounds in weight.

SECTION 2. Any railroad company or any officer, agent or representative thereof, who shall violate any provision of this act, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the state prison for a period not exceeding five (5) years, or by both such fine and imprisonment.

SECTION 3. This act shall take effect and be in force from and after the 1st day of May, 1907.

EXHIBIT "C."

An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission.

SECTION 1. For the purposes of this act the commodities hereinafter named are classified as follows: Wheat, flax seed, broom corn seed, hemp seed, millet seed, popcorn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain or cereal products manufactured from wheat, shall constitute class eleven (11); corn, oats, rye, barley, alfalfa feed, alfalfa meal, bran, brewers' grits, brewers' meal, brewers' refuse (dry), chopped feed, other than wheat chops, corn flour, corn meal, cotton seed cake, cotton seed hulls, cotton seed meal, gluten feed, gluten meal, grain screenings, hominy feed, kafir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, spelts,

wild mustard seed, oat groats, rolled oats, oat dust, oat hulls,
26 oat meal, rolled rye, rye flour, malt, pearl barley and all uncooked grain or cereal products manufactured from corn, oats or rye, shall constitute class twelve (12); lumber, lath, shingles, sash, doors and blinds shall constitute class thirteen (13); sheep (when carried in double decked cars) and cattle shall constitute class fourteen (14); sheep (when carried in single decked cars) and hogs shall constitute class fifteen (15); hard coal shall constitute class sixteen (16); soft coal shall constitute class seventeen (17).

SECTION 2. The following are hereby established and declared to be the reasonable maximum rates to be charged by Railroad Companies as common carriers of property in the State of Minnesota, for the transportation, in car load lots, of the commodities belonging to the classes named in section one (1) of this act, between stations in the State of Minnesota for the distances named in the following schedules, to-wit:

27

Distance *not* miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars and cents per ton.	Rates for commodities in classification No. 17 in dollars and cents per ton.
5	2.7	2.7	2.7	4.4	4.9	.54	.44
10	3.3	2.8	3.3	5.	5.5	.62	.49
15	3.8	3.4	3.8	5.5	6.3	.63	.51
20	4.4	3.8	4.4	6.3	6.8	.65	.52
25	4.6	4.	5.4	6.7	7.6	.69	.54
30	4.8	4.2	5.6	7.4	8.3	.70	.57
35	5.	4.5	5.8	7.9	9.	.72	.58
40	5.2	4.6	6.	8.6	9.7	.74	.59
45	5.4	4.8	6.3	9.2	10.3	.75	.61
50	5.7	5.	6.5	9.8	11.	.77	.62
55	[illegible]9	5.1	6.8	10.	11.3	.81	.64
60	[illegible]	5.3	7.0	10.2	11.5	.83	.65
65	6.[illegible]	5.5	7.4	10.5	11.8	.85	.69
70	6.5	5.8	7.5	10.7	12.	.87	.70
75	6.7	6.	7.7	10.9	12.3	.89	.72
80	7.	6.2	8.1	11.1	12.5	.93	.74
85	7.2	6.3	8.3	11.3	12.7	.95	.75
90	7.4	6.5	8.5	11.4	13.	.97	.77
95	7.6	6.7	8.7	11.8	13.3	.99	.80
100	7.8	7.	9.	12.	13.5	1.01	.82
105	7.9	7.	9.2	12.2	13.7	1.04	.83
110	8.1	7.	9.3	12.4	13.9	1.06	.84
115	8.2	7.2	9.4	12.6	14.3	1.07	.85

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Distance and miles.	Rates for commodities in classification No. 11 in cents per 100 lbs.	Rates for commodities in classification No. 12 in cents per 100 lbs.	Rates for commodities in classification No. 13 in cents per 100 lbs.	Rates for commodities in classification No. 14 in cents per 100 lbs.	Rates for commodities in classification No. 15 in cents per 100 lbs.	Rates for commodities in classification No. 16 in dollars and cents per ton.	Rates for commodities in classification No. 17 in dollars and cents per ton.
120	8.2	7.2	9.4	12.8	14.5	1.08	.86
125	8.3	7.3	9.5	13.	14.7	1.10	.87
130	8.4	7.4	9.6	13.3	14.9	1.11	.88
135	8.5	7.4	9.8	13.5	15.3	1.12	.92
140	8.5	7.5	9.8	13.7	15.5	1.16	.93
145	8.6	7.6	9.9	13.9	15.7	1.17	.94
150	8.7	7.6	10.	14.2	15.9	1.19	.95
155	8.8	7.7	10.1	14.4	16.2	1.20	.96
160	8.8	7.8	10.1	14.6	16.4	1.22	.98
28							
165	9.	7.9	10.4	14.8	16.7	1.24	1.00
170	9.	7.9	10.4	15.	16.9	1.29	1.01
175	9.1	8.1	10.6	15.3	17.2	1.31	1.05
180	9.1	8.1	10.6	15.5	17.4	1.33	1.07
185	9.3	8.2	10.7	15.7	17.6	1.35	1.09
190	9.4	8.3	10.8	15.9	17.9	1.37	1.10
195	9.5	8.3	10.9	16.1	18.2	1.42	1.12
200	9.6	8.4	11.	16.3	18.4	1.44	1.16
210	9.7	8.5	11.1	16.6	18.6	1.48	1.19
220	9.8	8.6	11.2	16.8	18.8	1.54	1.22
230	9.9	8.7	11.4	17.	19.1	1.58	1.28
240	10.	8.8	11.6	17.2	19.4	1.63	1.31
250	10.2	8.9	11.8	17.4	19.6	1.68	1.34
260	10.3	9.1	11.9	17.6	19.8	1.72	1.37
270	10.5	9.3	12.	17.9	20.2	1.78	1.42
280	10.6	9.4	12.2	18.1	20.4	1.82	1.46
290	10.8	9.5	12.4	18.3	20.6	1.87	1.49
300	10.9	9.6	12.5	18.5	20.8	1.92	1.54
310	11.	9.7	12.6	18.7	21.1	1.94	1.56
320	11.1	9.8	12.8	19.	21.4	1.96	1.57
330	11.2	9.9	12.9	19.2	21.6	1.99	1.59
340	11.3	9.9	13.1	19.4	21.8	2.02	1.60
350	11.4	10.	13.2	19.6	22.1	2.04	1.63
360	11.5	10.1	13.3	19.8	22.3	2.06	1.66
370	11.7	10.2	13.4	20.	22.6	2.08	1.67
380	11.8	10.3	13.5	20.3	22.8	2.11	1.69
390	11.9	10.5	13.6	20.5	23.1	2.13	1.70
400	12.	10.6	13.7	20.7	23.3	2.16	1.72

SECTION 3. When the exact distance which a commodity is transported is not given in the foregoing schedule, the carrier may charge the rate specified in the said schedule for the next greater distance. In order to constitute a car load, within the meaning of this act the weight of the commodity in any one car shall be at least as follows: Class eleven (11) and class twelve (12), twenty-four thousand (24,000) pounds; class thirteen (13), twenty thousand (20,000) pounds; class fourteen (14), nineteen thousand (19,000) pounds; class fifteen (15) fifteen thousand (15,000) pounds; classes sixteen (16) and seventeen (17) thirty thousand (30,000) pounds.

SECTION 4. No Railroad Company, which is a common carrier of property within the State of Minnesota shall charge, take or receive any greater sum for carrying within this state, between stations therein, any of the commodities named in this act than the respective amounts set forth and provided for in section two of this act for the respective distances therein named.

SECTION 5. This act shall not in any manner affect the power or authority of the Railroad and Warehouse Commission, except that no duty shall rest upon the Railroad and Warehouse Commission to enforce any rates specifically fixed by this or any other statute in this state. Whenever in a proceeding regularly pending before the Railroad and Warehouse Commission, it shall be made to appear to the satisfaction of said Commission that the rates herein prescribed are unreasonable, it may by order fix higher or lower rates for the transportation of any of the commodities herein mentioned, over the line of any railroad in this state, and such rates when so fixed shall supersede the rates herein prescribed upon said line of railroad, and shall be enforced as prescribed by the law relating to such orders, and until such order shall have been made by said Railroad and Warehouse Commission the rates herein prescribed shall be the conclusive legal maximum rates for the transportation of the commodities herein enumerated, between points within this State.

SECTION 6. Every railroad company transacting the business of a common carrier within this State shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it, between stations upon its line of railroad in this State, of the commodities named in this act, and every officer, director, traffic manager or agent or employé of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by said railroad company of rates not exceeding those specified in this act; and any officer, director or such agent or employé of any such railroad company who violates any of the provisions of this section, or who causes, or counsels, advises or assists any such railroad company to violate any of the provisions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends, and in which it has a station, and upon conviction thereof

be punished by imprisonment in the county jail for a period not exceeding ninety days.

SECTION 7. If at the time of the taking effect of this act any railroad is maintaining a rate between any two stations in this state that is less than the rate herein prescribed for the same distance, this act shall not be construed as authorizing the raising of such rate.

SECTION 8. This act shall take effect and be in force from and after June 1, 1907.

31 EXHIBIT "D."

NEW YORK, *April* 23, 1907.

To the Minneapolis and St. Louis Railroad Company and its Board of Directors:

I am a stockholder in The Minneapolis & St. Louis Railroad Company, owning and holding 500 shares of the Preferred stock, and 3,453 shares of the Common stock of said Company of the par value in the aggregate of $395,300.

I have been informed that the State of Minnesota has recently enacted a law prohibiting railroad companies owning and operating lines in said state from charging or collecting more than two cent (2c.) per train mile for carrying passengers within that state, which law is embodied in House File Number 486 of the Minnesota State Legislature, and has established, or attempted to establish, a distance tariff for the carriage of freight between points in said state, which distance tariff is embodied in and made a part of House File Number 1190 of the Legislature of said State of Minnesota, entitled and being "A Bill for an act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad and Warehouse Commission."

If not already so advised, I desire to call your attention to the fact that the acts herein referred to make large reductions in the rates and charges of all railroads in said State of Minnesota, including, and especially in the rates and charges of The Minneapolis and St. Louis Railroad Company for the carriage of both passengers and freight that the reduction so made by said bill, if put in effect, will make a reduction of about 33⅓% in the passenger rates now being charged, and of the freight rates not less than 10% of the present rates, or the rates now in force.

32 I am informed also that the result of these reductions will undoubtedly be to diminish the earnings of The Minneapolis and St. Louis Railroad Company below the point at which its operating expenses, fixed charges in Minnesota and a reasonable return upon the business done in said State, can be realized.

I am further informed that the effect of such reductions in freight and passenger business of said company in Minnesota will be to seriously effect and reduce the earnings of said company in other states by reason of the relation which the local rates in Minnesota bear, and must necessarily bear to the interstate rates of said company in Minnesota and the adjoining states and all the states through

which the lines of The Minneapolis & St. Louis Railroad Company extends.

You are further informed that I am advised by counsel that both of said statutes so reducing freight and passenger rates in Minnesota are unconstitutional and void and that they do not provide for a judicial inquiry into the reasonableness of the charges therein established, excepting proceedings of a penal character, and, further, that the charges established by said acts are unreasonable, unjust and confiscatory, in that they will operate to deprive said company of its property without due process of law and deny to it the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States.

Other objections of a similar character may be urged, but those above mentioned justify me, as a stockholder of The Minneapolis & St. Louis Railroad Company, to insist that the directors should take measures effective to protect the interest of the stockholders against the operation of said statutes.

I therefore, request, and demand, that The Minneapolis and
33 St. Louis Railroad Company shall decline to put the rates above mentioned into operation, and by proper legal proceedings test the validity of said statutes in the courts.

Your attention is called to the fact that the said statute in respect to passenger rates takes effect on the first day of May next, and the statute with respect to freight rates on the first day of June next.

It is, therefore, of the utmost importance that you take action upon the matter of this communication at the earliest possible moment and prior to the time fixed for taking effect of the statute to which I have called your attention.

Very respectfully yours,

(Signed) WILLIAM SHILLABER.

(Endorsed:) Bill of Complaint. Filed May 31, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

34 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Minneapolis & St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy thereof with L. F. Day, Vice President and General Manager of said Company, personally, at Minneapolis in said District on the Thirty-first day of May, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Minneapolis & St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy

thereof with A. B. Cutts, General Passenger & Ticket Agent of said Company, personally, at Minneapolis in said District on the Thirty-first day of May, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By LEONE RICH, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Minneapolis & St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy thereof with J. N. Tettimore, Freight & Traffic Manager of said Company, personally, at Minneapolis in said District on the Thirty-first day of May, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

35 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Edward T. Young, Attorney General for State of Minnesota, by handing to and leaving a true and correct copy thereof with him personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Chancery-Subpœna on the therein-named Ira B. Mills, Charles F. Staples and Wm. E. Young, by handing to and leaving a true and correct copy thereof with each of them personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, Third Division:

The President of the United States of America to The Minneapolis and St. Louis Railroad Company, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of July
36 next, at the city of St. Paul, then and there to answer the Bill of Complaint of William Shillaber, a citizen of the State

of New York, filed against you on the 31st day of May, A. D. 1907; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 31st day of May, 1907.

Issued at my office in the city of St. Paul under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL.]

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

MEMORANDUM.—The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

HOW, BUTLER & MITCHELL,
Complainants' Solicitor.

Endorsement: Chancery Subpœna. Filed June 11th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

37 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Minneapolis & St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy thereof with L. F. Day, Vice President and General Manager of said Company and by exhibiting Judge Lochren's original signature to him personally at Minneapolis in said District on the Thirty-first day of May, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Minneapolis & St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy thereof with A. B. Cutts, General Passenger and Ticket Agent of said Company by exhibiting Judge Lochren's Original signature to him personally at Minneapolis in said District on the Thirty-first day of May, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By LEONE RICH, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Minneapolis

& St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy thereof with J. N. Tettimore, Freight and Traffic Manager of said Company, and by exhibiting Judge Lochren's Original Signature to him personally at Minneapolis in said District on the Thirty-first day of May, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

38 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Edward T. Young, Attorney General for the State of Minnesota, by handing to and leaving a true and correct copy thereof with him and by exhibiting Judge Lochren's Original Signature personally at St. Paul in said District on the 31st day of May, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Ira B. Mills, Charles F. Staples and Wm. E. Young, by handing to and leaving a true and correct copy thereof with each of them and by exhibiting Judge Lochren's original signature personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Minneapolis & St. Louis Railroad Company, et al., by handing to and leaving a true and correct copy thereof with John G. Rickel, City Passenger and Ticket Agent of said Company, and by exhibiting Judge Lochren's original signature to him personally at Minneapolis in said District on the first day of June, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal.

39 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on W. E. Withiespoon, City Ticket Agent of the Minneapolis and St. Louis Ry. Co., by handing to and

leaving a true and correct copy thereof with H. C. Munson, Assistant Agent of said road, personally at St. Paul in said District on the 1st day of June, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

The complainant having filed *their* verified bill of the complaint in this Court against the defendants above named, praying for a temporary and permanent injunction, and in the meantime for a restraining order, and this Court having duly read and considered said bill of complaint:

Now, on motion of How, Butler & Mitchell, solicitors for said complainant,

It Is Ordered, That said defendants, and each of them, show cause before this Court, in the Federal Building, at Saint Paul, Minnesota, on the 12th day of June, 1907, at ten o'clock in the forenoon of that day, why a temporary injunction should not issue in accordance with the prayer in said bill of complaint contained.

That in the meantime, and until further order of the Court in the premises, the said defendant, The Minneapolis and St. Louis Railroad Company, its officers, directors, agents and employés, be and they are hereby restrained from publishing or adopting the classifications, tariffs and charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and described in said complaint, or from reducing its tariffs to the figures set forth in said Act.

That in the meantime, and until the further order of the Court in the premises, said defendant, Edward T. Young, Attorney General of the State of Minnesota, is hereby restrained from taking, or causing to be taken, any action, step or proceeding against said Railway Company, its officers, directors, agents or employés, to enforce the penalties and remedies specified in said Act approved April 18, 1907.

Dated May 31st, 1907.

WM. LOCHREN, *Judge.*

Endorsement: Restraining Order. Filed May 31st, 1907. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

41 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM A. SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

It is ordered that the hearing on the order to show cause heretofore made herein, why a temporary injunction should not issue in accordance with the prayer in the bill of complaint herein contained, be and the same is hereby continued to and until the 8th day of July, 1907, at ten (10) o'clock in the forenoon of that day.

That in the meantime, until the further order of the Court in the premises, the restraining order heretofore made herein, be and the same is hereby in all things continued.

The right is reserved to Edward T. Young to make any special appearance herein for himself or for defendants Ira B. Mills, Charles F. Staples and William E. Young, and any motion herein founded thereon at any time prior to the Rule day in July, 1907.

Dated St. Paul, Minn., June 7, 1907.

WM. LOCHREN, *Judge.*

Endorsement: Order Continuing Hearing. Filed June 10th, 1907. Henry D. Lang, Clerk.

42 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SCHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Appearance.

Comes now the defendant, The Minneapolis & St. Louis Railroad Company, and enters its appearance in said cause.

GEORGE W. SEEVERS,
JOHN I. DILLE,
Attorneys for The Minneapolis & St. Louis Railroad Company.

Endorsement: Appearance. Filed June 10th, 1907. Henry D. Lang, Clerk.

43 United States Circuit Court, District of Minnesota, Third Division.

Chancery Rule and Order Book.

No. 862. Equity.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUISE RAILROAD COMPANY et al., Defendants.

And now comes the defendant Minneapolis & St. Louis Railway Company by George W. Seevers and John I. Dille Solicitors on whose motion it is ordered that the appearance of said defendant be, and the same is hereby entered.

44 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Appearance.

The Clerk will enter our appearance for Ira B. Mills, Charles F. Staples and William E. Young, three of the defendants in the above entitled cause.

E. T. YOUNG,
THOMAS D. O'BRIEN,
ROYAL A. STONE,
C. S. JELLEY,
GEORGE T. SIMPSON,
Solicitors for Said Defendants.

Endorsement: Appearance for Ira Mills, Charles F. Staples, and William E. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

45 United States Circuit Court, District of Minnesota, Third Division.

No. 862. Equity.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUISE RAILROAD COMPANY et al., Defendants.

Chancery Rule and Order Book.

And now come the defendants Ira B. Mills, Charles F. Staples and William E. Young by E. T. Young, Thos. D. O'Brien, Royal A.

Stone, C. S. Jelley and George T. Simpson, Solicitors on whose motion it is ordered that the appearance of said defendants be, and the same is hereby entered.

46 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Appearance.

The Clerk will enter our special appearance for Edward T. Young, one of the defendants in the above entitled cause, the said special appearance being only for the purposes of the motion to dismiss filed by said defendant.

ROYAL A. STONE,
THOMAS D. O'BRIEN,
C. S. JELLEY,
GEORGE T. SIMPSON,
Solicitors for Said Defendant.

Endorsement: Appearance for Edward T. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

47 United States Circuit Court, District of Minnesota, Third Division.

No. 862. Equity.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUISE RAILROAD COMPANY et al., Defendants.

Chancery Rule and Order Book.

And now comes the defendant Edward T. Young by Royal A. Stone, Thos. D. O'Brien, C. S. Jelley & Geo. T. Simpson, Solicitors on whose motion it is ordered that the appearance of said defendant be, and the same is hereby entered.

48 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Motion to Dismiss as to Edward T. Young.

Comes now the defendant, Edward T. Young, the Attorney General of the State of Minnesota, and, appearing specially and only for the purpose of this motion, and not otherwise submitting to or acknowledging the jurisdiction of this Court in the premises, and expressly averring that the State of Minnesota has not and does not consent to the commencement of this action in manner and form as herein attempted or otherwise, moves this Honorable Court to dismiss as to him the bill of complaint filed in the above entitled cause, and for the ground of this motion shows:

That it appears by the said bill that the same is exhibited by the complainant against this defendant as, and only as, the Attorney General of the State of Minnesota, and that the relief sought and prayed for therein is the restraint of him, the said Edward T. Young as Attorney General aforesaid, by writ of injunction, from proceeding in his official capacity, and not otherwise, and in the
49 exercise of an executive discretion thereby vested in him, to commence the appropriate action or actions in the name of and on behalf of the said State of Minnesota, thereby restraining the State of Minnesota from proceeding by appropriate action or actions to enforce certain of its laws or to test the validity of the said laws; the said State of Minnesota as a party defendant, commenced against it without its consent, contrary to the Eleventh Amendment of the Constitution of the United States.

Wherefore, this defendant separately demands the judgment of this Honorable Court that the said bill of complaint be dismissed as to him.

EDWARD T. YOUNG.

ROYAL A. STONE,
GEORGE T. SIMPSON,
C. S. JELLEY,
THOMAS D. O'BRIEN,
Solicitors for said Defendant.

Endorsement: Motion to Dismiss as to Edward T. Young. Filed July 1st, 1907. Henry D. Lang, Clerk.

50 Circuit Court of the United States, District of Minnesota, Third Division.

In Chancery.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Separate Answer of Defendant The Minneapolis & St. Louis Railroad Company to the Bill of Complaint in said Cause.

This defendant, now and at all times hereafter saving and reserving to itself all benefits or advantage of exception or otherwise that can be taken to the errors, uncertainties and imperfections in said Bill contained, for its separate answer thereunto, or to so much thereof as this defendant is advised it is material or necessary to make answer to, answering says;

I.

This defendant admits the allegations of paragraph I of said bill.

II.

This defendant admits the allegations of paragraph II of said bill.

51 III.

This defendant is not advised, and therefore neither affirms nor denies the truth of the averments of paragraph III of complainant's Bill, that this is a suit in equity arising under the Constitution of the United States, for the reason therein set forth, but upon information and belief it admits that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum of $2,000.00 as averred.

IV.

This defendant admits that for more than twelve years last past it has been owner of and has operated certain lines of railroad in the State of Minnesota and in other states, extending from the City of Minneapolis in the State of Minnesota, to and beyond the state line between Minnesota and Iowa; thence into said State of Iowa to the Cities of Des Moines, Storm Lake and other points within the State of Iowa; and also from the Cities of St. Paul and Minneapolis in the State of Minnesota to the City of Watertown in the State of South Dakota, and is now and for more than two years last past has been operating said railroad as a continuous line of railroad for the transportation of interstate traffic from the Cities of St. Paul and Minneapolis in the State of Minnesota into the State of Iowa and the State

of South Dakota to the points heretofore named, and to a great number of other stations in said States intermediate upon said continuous line of railroad; that its system of railroads, including the said line and its branches, comprise about eight hundred miles; that all lines of the railroad of this defendant are connected with and oper-
52 ated as a part of its system in the States of Minnesota, Iowa and South Dakota, and it is engaged in the transportation of passengers and freight interstate upon said lines; that all the property of this defendant and all its facilities owned, leased or employed are engaged in and made instruments of such interstate commerce; that this defendant and its property are subject to the control and regulation of the Congress of the United States and of the Interstate Commerce Commission as to its rates, fares and charges upon all its business so transacted and the proper management and operation thereof, as well as the reasonableness of its charges made therefor.

V.

This defendant admits the averments of paragraph V of said Bill, and that Exhibit "A", annexed to said Bill, is a true copy of the order mentioned in said paragraph.

VI.

This defendant admits the allegations of paragraph VI of said Bill, and that Exhibit "B" annexed to said Bill is a true copy of the Act mentioned in said paragraph.

VII.

This defendant admits the allegations of paragraph VII of said Bill, and that Exhibit "C" annexed to said Bill, is a true copy of the Act mentioned in said paragraph.

VIII.

This defendant admits the allegations of paragraph VIII of said Bill, and admits that it has published and put into effect,
53 and now keeps and maintains in effect, the rates prescribed in said order of September 6th, 1906, and in said Act, approved April 4th, 1907, and intends to publish and put into effect the rates prescribed in said Act, approved April 18th, 1907, when said Act shall become effective by virtue of the provisions and terms thereof.

This defendant further admits that the charges for transportation of commodities heretofore made and charged by it and all the tariffs for the transportation of passengers and all charges for the transportation of property and passengers in the State of Minnesota, as the same existed before the making of said order September 6th, 1906, and the enactment of said Acts of April 4th and April 18th, 1907, and as they had been in force for a period of several years before said Acts and order came into effect, were low and none of them were unreasonably high and many of them are not now and have not been

yielding a fair and reasonable return upon the investment necessary for this Company to perform the services of said transportation.

That the tariff of charges for the transportation of all classes of freight and passengers as the same existed in the State of Minnesota upon the lines of this defendant prior to the making of said order and the enactment of said Acts, was not higher than it fairly should be as compared with the rates maintained and collected by this defendant in other states, through which its line of railroad runs, nor is the same unreasonably high as compared with the rates fixed and charged by this defendant for the transportation of interstate freight and passengers; that the said rates are, both in themselves
54 and in comparison with the rates charged and imposed in other States and on interstate traffic, low, just, fair and reasonable.

That the cost of handling traffic and transportating freight and passengers, and particularly the commodities mentioned in the Act of April 18, 1907, of the State of Minnesota, as local traffic between stations, is greater than in other states through which the railroad of this defendant extends, and that the cost of fuel, which is a large factor in the cost of operating said railroad, is higher in the State of Minnesota than in other States in which the said line extends, except that in the State of South Dakota fuel is slightly higher than in the State of Minnesota; that the expense of handling short hauls of traffic upon the lines of this defendant within the State of Minnesota is much greater than the expense of handling interstate traffic which moves for a longer distance over its lines of railroad.

IX.

The defendant admits that the expenses of maintaining and operating its lines of road, both in the State of Minnesota and interstate, have largely increased during the eighteen months last past; that the salaries and wages of its employés during said time have largely increased, such increase exceeding ten per cent within said period; that the cost of lumber, ties, piling and bridge timber used in the construction, renewal and repairs of the lines and property of this defendant has increased within said period from thirty-three to forty percent, and that within the same period the cost of steel rails and other materials generally used in railroad construction, renewals and repairs has increased from thirty-three to forty percent,
55 and that the cost of other materials and supplies has, in the same period, increased in like proportion, and the general increase of cost in materials used in the construction, renewals and repairs of railroad property in the section of the country wherein the railroad of this defendant is situated within the said time averages about the same proportion.

X.

This defendant admits the allegations of paragraph X of said Bill.

XI.

This defendant admits that its railroad has been and is economically administered and operated, and that the expenses of operation and taxes consume about sixty-two per cent of its entire gross earnings; that notwithstanding such increased operating expenses, the increased cost of all materials entering into the cost of maintenance and repairs in every Department of its railroad, the rates upon its railroad, and especially in the State of Minnesota, have decreased.

XII.

This defendant admits that its practice has always been to make its tariffs upon a uniform principle or basis, disregarding State lines; that its rates are and have been the same for similar distances upon local shipments either in Iowa, Minnesota or South Dakota and upon interstate shipments in that territory; that it is impossible to apply in any one of said States a materially different or lower plan, system or scale of tariffs upon local business in any of said States from that applied upon interstate business; that no reduction could be
56 made in the local rates in Minnesota without similar and corresponding reduction being made in the local rates in other States on the line of this defendant's railroad, nor in its interstate rates; that this defendant could not legally apply to stations beyond the Minnesota line a higher scale of rates than that applied to stations within the State; that a great loss of revenue would thus be caused to this defendant upon its interstate traffic, in addition to that immediaely incident to the rates provided for within the State of Minnesota in said Acts and order; that the reduction thus caused would deny this defendant a fair and reasonable income upon the money actually invested in its property and the value thereof, and upon its stock and bonds, representing the economical construction and equipment of its property; that the property of this defendant would be confiscated and it would be deprived of its property without due process of law in violation of the Constitution of the United States; that as applied to the defendant said Acts and order operate directly upon interstate commerce and are regulations of such commerce in violation of the exclusive power granted to Congress by the Constitution of the United States.

XIII.

This defendant admits the allegations of paragraph XIII of said Bill.

XIV.

This defendant admits the allegations of paragraph XIV of said Bill.

XV.

This defendant admits that the year ending June 30th, 1906, was an exceptionally prosperous year for railroad companies in
57 the State of Minnesota and in the States in which the lines of this defendant extend, as well as a prosperous year for all

other branches of industry; that for a period of years beginning with the year 1903 the business of this Company was poor; that the amount of commodities moved was low; that the revenues received were very much less per mile of track in the State of Minnesota than the revenue of the last year upon which the estimates and computations set out in complainant's Bill were made, and that the comparatively large receipts of this defendant at the present time are but temporary, and that such revenues do not in fact represent the fair average earnings of this Company for a series of years.

This defendant admits that it does not now earn above the actual cost of economically operating its lines of road a fair and reasonable return upon the cost or valuation of its railroad; that the railroad of this defendant since it was built has at no time earned a fair, reasonable or just return to its stockholders or owners upon the actual cost or value thereof; that it has never earned in its most prosperous years to exceed two per cent upon its actual cost or value, and for many years it has earned very much less than that amount; that upon its line of railroad in the State of Minnesota upon the business entirely local to said State the defendant does not now receive a net revenue therefrom equal to the cost of operation of its line in said State, and that defendant's property has been and is used in the transportation of local State business without any return upon the value of the property engaged in the handling or transportation of its traffic.

58 XVI.

This defendant admits that it had on June 30th, 1906, and still has, a bonded indebtedness upon its property in the aggregate amounting to $19,565,000.00, which divided upon a basis of mileage would make the actual indebtedness upon the line in the State of Minnesota $31,635.00 per mile of track; that on said date it had and still has issued and outstanding $4,000,000.00 of preferred stock which upon a like mileage apportionment would place upon its lines in the State of Minnesota $6,335.00 per mile; that on said date it had and still has issued and outstanding common stock which upon a like mileage apportionment would place upon its lines in the State of Minnesota $9,503.00 per mile; that the aggregate issues of bonds and preferred and common stock of this defendant do not exceed the actual cost of its property; that such aggregate sum is not equal to the present actual value of the property nor to the amount it would cost to replace and equip it in its present condition.

XVII.

This defendant admits that during the fiscal year ending June 30, 1906, its gross earnings from passenger traffic were $1,001,548.39 and from the transportation of freight $2,550,563.55; that its gross earnings during said period from the transportation of mail and express were $162,568.78; that its miscellaneous earnings during said period were $11,984.78, making a total of $3,726,665.50 of gross earnings.

This defendant admits that its operating expenses during said period amounted to the sum of $2,143,727.97 exclusive of taxes, interest on funded debt and rentals; that said sum of $2,143,
59 727.97 was made up as follows:

Maintenance of way and structures	$444,817.19
Maintenance of equipment	411,418.45
Conducting transportation	1,158,339.15
General Expenses	129,153.20

This defendant admits that its net earnings during the said period were the sum of $1,582,937.53; that its other income during said period was $259,731.75, making its total net income, exclusive of payment of taxes, interest on funded debt and rentals, $1,842,669.28.

This defendant admits that for said fiscal year ending June 30th, 1906, this defendant paid for taxes $165,468.59, interest on funded debt $1,095,932.04, and for rentals $165,238.70, making a total of $1,327,928.99, leaving for said year 1906 a surplus applicable for the payment of dividends on its preferred stock of $416,029.95.

This defendant admits that its gross earnings for the fiscal year ending June 30th, 1906, from all freight traffic would have been decreased by not less than the sum of $225,000.00; that its gross earnings for the same period from all passenger traffic would have been decreased by not less than the sum of $92,000.00 had the rates for said transportation of passengers and freights have been fixed during said period at the amounts provided in the aforesaid Acts and order.

This defendant admits that its operating expenses and taxes for the ten months ending April 30, 1907, have been about $223,000.00 more than those for the corresponding ten months of the previous year, while the gross earnings of this defendant for the same period of ten months have increased only to the extent of $100,-
60 000.00; that if the maximum charges for the transportation of passengers and freight prescribed in said Acts and order had been in effect during said period of time, this defendant would not have earned any sum whatever upon its capital stock and that its operations for the said ten months would have resulted in a deficit.

XVIII.

This defendant admits the allegations of paragraph XVIII of said Bill.

XIX.

This defendant admits the allegations of paragraph XIX of said Bill.

XX.

This defendant admits the allegations of paragraph XX of said Bill.

XXI.

This defendant admits the allegations of paragraph XXI of said Bill.

XXII.

This defendant admits the allegations of paragraph XXII of said Bill.

XXIII.

This defendant admits that it is now engaged in the operation of upwards of eight hundred miles of railroad in the States of Iowa, Minnesota and South Dakota; that in such operation it has in use great numbers of cars for the carriage of passengers and freight; that it has in its employ engaged in such operation great numbers of employés; that it carries on an average 3,318 passengers and 6,482 tons of freight per day over the lines owned and operated by
61 it; that under and by virtue of said Acts and order and the obligation of this defendant to carry such passengers and such freight as may be presented to it for carriage, it will be subjected to innumerable demands for the sale of tickets and the transportation of freight at the rates fixed by said Acts and order; that on the refusal of this defendant to comply with such demands it may be subjected to numerous actions at law and to annoyance, litigation and loss by reason thereof; that this defendant and its officers and employés will become subject also to litigation and actions to enforce the penalties provided in said Acts for failure to comply with the provisions thereof; that as a result this defendant will be put to great loss, damage, hindrance and annoyance in the transaction of its business; that this defendant is entitled to carry on its said business without such suits, litigations, actions, annoyance, hindrance, loss and damage and the irreparable injury to this defendant resulting therefrom.

All of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct.

Wherefore, Having sufficiently answered, confessed, traversed or denied all matters and things in complainant's said Bill of Complaint, material or necessary for this defendant to make answer unto, it humbly prays to be hence dismissed with its reasonable costs and charges in this behalf sustained.

JOHN I. DILLE,
Solicitor for said Defendant.

GEORGE W. SEEVERS,
Of Counsel.

Endorsement: Separate Answer of The Minneapolis & St. Louis Railroad Company. Filed July 8th, 1907. Henry D. Lang, Clerk.

62 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

Now comes Edward T. Young, one of the defendants above named, appearing specially and only in response to the Order to Show Cause why a temporary injunction should not issue as prayed for herein, and for cause why such temporary injunction should not issue as to him, shows:

That it appears by the Bill of Complaint exhibited herein, that the same is exhibited by the complainants against this defendant as, and only as the Attorney General of the State of Minnesota, and that the relief sought and prayed for therein is the restraint of him, the said Edward T. Young as Attorney General aforesaid, by Writ of Injunction, from proceeding in his official capacity, and not otherwise, and in the exercise of an executive discretion thereby vested in him, to commence the appropriate action or actions in the name of and on behalf of the said State of Minnesota, thereby restraining the State of Minnesota from proceeding by appropriate action or actions to enforce certain of its laws or to test the validity of the said laws; the said suit being therefore, in truth and effect a suit against the said State of Minnesota as a party defendant,
63 commenced against it without its consent, contrary to the Eleventh Amendment of the Constitution of the United States.

Wherefore, this defendant prays the said Order to Show Cause be discharged.

EDWARD T. YOUNG.

THOMAS D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for said Defendant.

Endorsement: Motion to Dismiss Temporary Injunction as to Edward T. Young. Filed July 8th, 1907. Henry D. Lang, Clerk.

64 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira S. Mills, Charles F. Staples, William E. Young, Defendants.

Now come the above named defendants Ira B. Mills, Charles F. Staples and William E. Young and reserving their right to make such further and other showing and proof as they may hereafter be advised is necessary and proper, pray this Honorable Court that at this time the rule and order to show cause heretofore issued to and served upon them in the above entitled cause be discharged as to these defendants upon the grounds and for the reasons that it is manifest:

I.

That no facts are stated in the bill of complaint exhibited by said complainant sufficient to show that he is entitled to any relief as against these defendants, whether as prayed in said bill or otherwise.

II.

That in said bill several distinct and separate matters are attempted to be alleged, as to several of which these defendants are in no way connected and in others of which some of the other defendants are in no way interested or connected and said several matters
65 are so separate and distinct and the rights and interests of the defendants so different that the said matters and the said defendants cannot be properly joined in one action.

III.

That it manifestly appears by said bill that the same is exhibited against these defendants in their official capacity as members of and constituting the Railroad and Warehouse Commission of the State of Minnesota, and inasmuch as the relief sought against these defendants is to restrain their official action, the same is in effect and in truth a suit against the State of Minnesota and against its objection.

IV.

That it appears from said bill that these defendants' duties are and have been fully performed with reference to any proceedings by them concerning the order of the Railroad and Warehouse Commission of September 6th, 1906, attempted to be described in said bill; that the rates prescribed by said order are in full force and effect, by the voluntary act of the defendant railroad company, and constitute the only legal rates which may be charged for the transportation of the merchandise described in said order between stations in the state of Minnesota, and no other or different rates can be fixed except in the manner provided by the statutes of the state of Minnesota in that behalf enacted.

V.

That it appears from said bill of complaint that these defendants do not contemplate or threaten to take any action or proceeding with reference to the order of September 6th, 1906, or the acts of the Legislature of the State of Minnesota referred to in said bill.

66 IV.

That the statutes of the State of Minnesota defining the powers and duties of the Railroad and Warehouse Commission provide no penalty for failure to obey the orders of said commission and the only method of enforcing compliance with an order of said commission is by a proceeding in mandamus in the District Court of Minnesota, and this Court will not make an order in restraint of such proceedings.

Wherefore these defendants pray that without any other or further showing of cause upon their part said rule and order be discharged as to them.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

EDWARD T. YOUNG,
GEORGE T. SIMPSON,
ROYAL A. STONE,
THOMAS D. O'BRIEN,
C. S. JELLEY,
Solicitors for these Defendants.

Endorsement: Motion to discharge restraining order as to Railroad & Warehouse Commission. Filed July 8th, 1907. Henry D. Lang, Clerk.

67 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

JULY 8TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come the parties to this cause by their respective solicitors and the motion of the defendants Edward T. Young, for a

dismissal of the bill of complaint filed in the above entitled cause as to him for the reasons therein states, now coming on to be heard, Mr. Edward T. Young appears specially for himself for the purpose solely of said motion and argues the same on his behalf and Mr. Jared How appears for and argues in opposition thereto on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties thereto upon the said order motion, it is by the Court ordered that the same be and it hereby is denied.

An exception is prayed on behalf of the said defendant to the said order denying the said motion and is allowed.

This day come the parties to this cause by their respective solicitors, Mr. Jared How appearing on behalf of the complainant and Messrs. Edward T. Young, Royal A. Stone, Thomas D. O'Brien, C. S. Jelley and George T. Simpson, appearing on behalf of the defendants Ira B. Mills, Charles F. Staples and William E. Young, and the motion of the aforesaid defendants for a dismissal of the order to show cause heretofore issued and served upon them and returnable at this time and place, now coming on to be heard, the same is argued by the solicitors for the respective parties
68 hereto and after hearing the arguments and statements of counsel thereon and being fully advised in the premises, after due consideration thereof it is by the Court ordered that the said motion be and the same hereby is denied.

An exception is prayed on behalf of the said defendants to the said order denying said motion and is allowed.

69 This day come the parties to this cause by their respective solicitors, Mr. Jared How appearing on behalf of the complainant and Edward T. Young, Royal A. Stone, Thomas D. O'Brien, C. S. Jelley and George T. Simpson appearing on behalf of the defendant Edward T. Young, and the order to show cause heretofore issued and returnable at this time and place why a temporary injunction should not issue as therein prayed for, now coming on to be heard the same is presented to the Court solely upon the question as to whether or not if it should be determined upon a final hearing upon this order to show cause that a temporary injunction shall issue whether or not the same shall include the defendant Edward T. Young,

Mr. Jared How argues upon said order to show cause on behalf of the complainants.

Mr. Royal A. Stone argues in opposition thereto on behalf of the defendant Edward T. Young.

And here the court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Royal A. Stone resumes and concludes his argument upon the said order to show cause on behalf of the defendants.

And the hearings on said order to show cause not being concluded at the hour of adjournment, it is by the Court ordered that

further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

70 Upon the agreement and consent of the solicitors for the respective parties hereto, it is by the Court ordered that the hearing upon the order to show cause heretofore duly issued and served upon each of the defendants in the above entitled cause returnable at this time and place be and the same hereby is postponed and continued until Tuesday morning next at ten o'clock in the forenoon of said day at the Federal building in St. Paul, Minnesota.

It is further ordered that the Temporary Restraining Order heretofore issued herein be and the same remain *un* full force and effect until that time or until vacated and discharged by the order of this court.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

71 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

JULY 9TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:
Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

* * * * * * *

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Upon the agreement and consent of the solicitors for the respective parties hereto, it is by the Court ordered that the hearing upon the order to show cause heretofore duly issued and served upon each of the defendants in the above entitled cause returnable at this time and place be and the same hereby is postponed and continued until Tuesday morning next at 10 o'clock in the forenoon of said day at the Federal Building in St. Paul, Minnesota.

It is further ordered that the Temporary Restraining Order heretofore issued herein be and the same remain in full force and effect until that time or until vacated and discharged by the order of this Court.

72 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

C. Equity. No. 862.
WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

JULY 9TH, 1907.

This day come again the parties to this cause by their respective solicitors and the hearing upon the order to show cause heretofore duly issued why a temporary injunction should not issue as prayed for against the defendants and each of them which comes on at this time solely upon the question as to whether or not if it shall be considered by the court upon a final showing upon this order to show cause that an injunction shall issue, whether or not the same shall include the defendant Edward T. Young, is resumed and continued as follows, to-wit:

Mr. Jared How argues upon said order to show cause on behalf of the complainant.

Mr. Thomas O'Brien argues in opposition on behalf of the defendant Edward T. Young.

Mr. C. W. Bunn argues upon said order to show cause on behalf of the defendant Railway Company.

Mr. Thomas Wilson argues further upon said order to show cause on behalf of the defendant Railway Company.

Mr. Edward T. Young argues further upon said order to show cause on his own behalf.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward T. Young resumes and concludes his argument upon said order to show cause on his own behalf.

Mr. Jared How argues in reply and conclusion upon said order to show cause on behalf of the complainant.

And after the hearing the arguments and statements of the solicitors for the respective parties hereto thereon and being fully advised in the premises, upon due consideration, it is by the Court ordered that if upon a final hearing of the order to show cause why a temporary injunction should not issue as therein prayed for it shall be determined that such injunction shall issue the same shall include the defendant Edward T. Young.

* * * * * * *

A true record.
Attest:
HENRY D. LANG, *Clerk.*

73 Circuit Court of the United States, District of Minnesota, Third Division.

862.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

This day come the parties to this cause by their respective solicitors, How, Butler & Mitchell appearing on behalf of the complainant, George W. Seevers appearing on behalf of the defendant The Minneapolis and St. Louis Railroad Company, and Messrs. E. T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson appearing for the defendants Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, and the same coming on for hearing upon the application of the complainants for a temporary injunction herein:

By consent of all parties in open court—

It is ordered, that the hearing upon rule to show cause, issued herein May 31st, 1907, be continued until September 3rd, 1907, at 10 o'clock A. M.

It is further ordered that in the meantime and until the further order of this Court in the premises, the restraining order
74 issued in and made part of the order to show cause issued May 31st, 1907, and all the provisions thereof shall be and the same are hereby in all things continued in full force and effect.

It was agreed between the parties as follows:

That complainant may, if so advised, serve additional affidavits in support of the application for temporary injunction on or before the 23rd day of July, 1907;

That the defendants shall answer or demur on or before the rule day in August;

That all affidavits in opposition to complainant's affidavits shall be filed and copies served on complainant's attorneys at least ten days before the date to which said hearing is continued aforesaid;

That any defendant who shall demur shall serve upon complainant's counsel at least ten days before the date to which said hearing is continued, a copy of the answer which said defendant will file in case the demurrer is overruled.

Now it is ordered that the foregoing stipulations be and the same are hereby approved by the Court.

Dated July 16th, 1907.

By the Court:

WM. LOCHREN, *Judge.*

Endorsement: Order Continuing Hearing on Order to Show Cause. Filed July 16th, 1907. Henry D. Lang, Clerk.

75 United States Circuit Court, District of Minnesota, Third Division.

C. Equity. No. 857.

CHARLES E. PERKINS et al., Complainants,
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
C. W. Bunn, for N. P. Ry. Co.
Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley, George T. Simpson, for Railroad and Warehouse Commission.

C. Equity. No. 858.

JOHN S. KENNEDY et al., Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
Wm. R. Begg, for G. N. Ry. Co.
Same appearance for Railroad and Warehouse Commission.
E. P. Peterson, for defendants Palm & Larson.

C. Equity. No. 859.

JAMES T. WOODWARD et al., Complainants,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
F. W. Root, for C., M. & St. P. Ry. Co.
Same appearances for Railroad & Warehouse Commission.

76 C. Equity. No. 860.

CRAWFORD LIVINGSTON et al., Complainants,
vs.
CHICAGO & NORTHWESTERN RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
Samuel A. Lynde, for C. & N. W. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

C. Equity. No. 861.

GEORGE S. BREWSTER et al., Complainants,
vs.
CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainants.
Thomas Wilson, for C., St. P., M. & O. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

C. Equity. No. 862.

WILLIAM SCHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainant.
George W. Seevers, for M. & St. L. Ry. Co.
Same appearances for Railroad and Warehouse Commission.

77 C. Equity. No. 863.

JOHN A. HUMBIRD, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY et al., Defendants.

Stiles W. Burr, for complainant.
Asa G. Briggs, for C. G. W. Ry. Co. et al,
Same appearances for Railroad and Warehouse Commission.
C. Louis Weeks, for C. H. Tripp.

C. Equity. No. 864.

FREDERICK C. BARROWS, Complainant,
vs.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY et al., Defendants.

John F. McGee, for complainant.
Alfred H. Bright, for M., St. P. & S. Ste. M. Ry. Co.
Same appearances for Railroad and Warehouse Commission.
R. J. Stromme, for E. Sauby.

C. Equity. No. 864.

JOHN J. CARLE, Complainant,
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al., Defendants.

How, Butler & Mitchell, for complainant.
McNeil V. Seymour, for C., R. I. & P. Ry. Co.
Same appearances for Railroad and Warehouse Commission.
C. Louis Weeks, for E. B. Swygart.

78 This cause came on for hearing before Honorable William Lochren, United States District Judge for the District of Minnesota, at the Federal Building, Saint Paul, Minnesota, on the eighth day of July, A. D. 1907.

The parties being present by their respective solicitors, the cause is fully argued and heard.

Whereupon, the court being duly advised in the premises, renders the following decision orally:

LOCHREN, *J.* (Orally): The question now before the court is as to whether or not in case temporary injunction shall issue in these cases the same should include the name of Edward T. Young as Attorney General of this state; and that presents the question as to whether or not the rates as established by legislative enactment and authority are unconstitutional and amount to the taking of the property of the railway companies without due process of law. It is alleged in the bills of each case that the several stockholders complainants have applied to the officers of their respective railroad companies, asking them to take proceedings for the preservation of the alleged rights of the stockholders, and that the railroad companies through their officers have refused or declined to do so; therefore the stockholders having no one to represent them, and owning stock in the railroad companies, and being interested in the welfare of the companies and have been obliged to bring these suits themselves.

I apprehend there is no doubt that while a railroad company is represented by its officers, the stockholders ordinarily are not permitted to proceed by themselves to protect the rights of the corporation; but where a corporation by its officers refuses to take proper action to protect its property, the stockholders themselves, as a matter of necessity, are empowered to take such action. I think this
79 view is upheld by the many similar cases referred to by counsel in this argument. The claim of the Attorney General is that these actions seeking to enjoin him are really suits against the state; that the state is the real party attempted to be proceeded against; and the eleventh amendment to the Constitution of the United States is referred to, which forbids a suit in law or equity against a state by a citizen of another state or by a citizen or subject of a foreign state.

There is no doubt that this goes to the extent claimed of forbidding any suit of that kind from bring brought in a federal court. There are other provisions also in the Constitution to be considered like that in the Fourteenth Amendment referred to, that no state shall interfere, deprive any person of life, liberty or property without due process of law. That is a provision which the courts must see is made effective, as well as the other. It is a provision which applies to a state. A state is not allowed to take private property without due process of law; and it is well settled with reference to public service corporations, that there the rates of compensation, for their services are fixed by state legislatures or administrative bodies acting under the authority of state legislatures, and those rates are made so low as not to be compensatory and not allow the business to be carried on at a fairly remunerative rate, then in fact private property is taken without due process of law; and any law to that effect, or any order of an administrative body to the same effect is unconstitutional; and a party must necessarily have some relief against wrongful acts of that kind. He must have the right to apply to the courts with the full expectation and certainty, in a proper case, of finding proper relief. Such a law or order if it does not afford proper com-
80 pensation for the services that are required of these corporations, does in fact become confiscatory, and is for that reason

unconstitutional. It confers no authority upon any one who attempts to enforce it, and therefore courts step in by their equity powers of injunction to prevent attempts to enforce such enactment or order. If an officer of the state attempts to enforce such an enactment or order he has no protection in law for such action; he cannot be protected while acting under an unconstitutional law by the mere fact that he is an officer of the state which state has enacted or attempted to enact that same law.

It was claimed in the argument yesterday by the Assistant Attorney General that one of the purposes of that office is to test this constitutional question and to bring an action in the state court so that it may be determined whether the law is enforcible or not. Now the only action for which there is any provision that I have observed is by prosecution brought against either of the railroad companies or some of their agents or officials, in the nature of a criminal prosecution for disobedience to or failure to obey the law. It cannot be well claimed that the constitutionality of that law in a case of this kind can be decided in an action of that sort. If an action of that kind were brought in a state court, an action of a criminal nature, the defense that the law was unconstitutional or confiscatory could not be made out in that court; nor could any proper remedy be granted. The presumption would be that the rates so fixed were reasonable. There is always a presumption in cases of that sort that the rates fixed by the legislature are reasonable. The court in the trial of a criminal case brought to recover penalties or fines, or seeking imprisonment of the party indicted would have no machinery or means to determine whether these rates were reasonable or unreasonable, or whether they went to the extent of con-
81 fiscation or not. It will be a very difficult question for any court to determine, mixed as these rates are,, with rates fixed by the interstate commerce commission respecting interstate traffic, whether they were reasonable. It would be a very complex question for any court to determine as to the effect of those local rates, whether they were confiscatory or not. That matter certainly could not be determined in a criminal action brought for an alleged violation of those laws. Therefore there can be no remedy afforded by any state court in this case on the question as to whether as claimed in these bills of complaint the law is actually confiscatory and therefore unconstitutional; and the railroad companies and stockholders, if denied a remedy in this court, would be without remedy, they would be remediless; and the provision of the Constitution which is intended to protect persons in the ownership of property as against a state would be rendered nugatory.

Now, with respect to whether the Attorney General should be included as a party in case the court should determine to grant an injunction. It seems to me that he must be so included, and if it should turn out that this law shall be held to be unconstitutional, it will be no protection to him. There is no other practical way to raise the question than by bringing a suit of this kind and making the Attorney General a party to it. There would be no purpose in going on with these actions if the Attorney General is left out. He is the person who it is alleged in the bills has threatened and is

threatening to enforce these alleged unconstitutional rates; and if not enjoined of course he will be entirely free to proceed to enforce them. The one statute of the state which requires him in such a case to so proceed is Section 395 of the Statutes of Minnesota, and by that he is required in case he shall have evidence that a
82 railway company has committed any offense against the laws of the state, or has failed to exercise its franchises, or misused or abandoned them, to commence a prosecution against the railroad company at once. It is not a matter that is left to his discretion as to whether he shall proceed or not; the statute requires him to do so. As far as the alleged offenses for violation of this act are concerned, it seems to me that the direction to the Attorney General is just as potent as if it were included in the act itself.

I think therefore that if the showing shall be such that it will appear to the court that an injunction should issue, then the Attorney General should be included in it; and that this is not within the decisions of the Supreme Court suit against the state, but against the Attorney General as an officer charged with the enforcement of these acts which are claimed to be unconstitutional.

This is as far, perhaps, as I need go at the present time.

Endorsement: Opinion on Motion to Dismiss Order to Show Cause as to Edward T. Young, Atty. Gen'l. Filed July 16th, 1907. Henry D. Lang, Clerk.

83 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Order Allowing Amendments to Bill of Complaint.

Upon motion of How, Butler & Mitchell,

Ordered, that the complainant have leave forthwith to file the attached amendments to his Bill of Complaint, without prejudice to the restraining order and order to show cause heretofore issued, or to any other proceeding heretofore had. Fair copies of the amendments shall be forthwith furnished to the defendants without cost, and answers, motions, pleas and demurrers heretofore interposed may stand as answers, motions, pleas or demurrers upon the Bill as amended.

WM. LOCHREN, *Judge.*

Dated August 3rd, 1907.

84 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Amendments to Bill of Complaint.

Now comes the complainant above named, and amends the Bill of Complaint heretofore filed in said cause in the following particulars:

1. In paragraph XXI of said Bill of Complaint, immediately prior to the sentence commencing with the words "This suit is not in any manner", insert the following:

"That the reason why said President and directors so declined and refused to comply with such demand was not in any manner because they considered said proposed rates would yield a fair and just return upon the capital invested, or would not be confiscatory, but because by reason of the seve-ity of the penalties prescribed for the violation of said Acts and Order they could not subject themselves and the property of the railroad to the ruinous consequences which would inevitably result from failure on their part to obey the said laws and order, a result which no action by themselves, their stockholders or directors could possibly prevent. Your orator is advised and believes that the shareholders in the said Minneapolis &
85 St. Louis Railway Company are extremely numerous and widely scattered, living in this and many foreign countries; that it would have been impossible to procure a meeting of such shareholders within such time as would have been necessary in order that your Orator and other shareholders might have relief in the premises."

2. After paragraph XXII in said Bill of Complaint insert the following:

"XXII*a*. Your Orator further alleges that said Acts of April 4, 1907, and April 18, 1907, are and each of them is, in the penalties prescribed for their violation, so drastic, that no owner or operator of railway property can invoke the jurisdiction of any court to test the validity thereof, except at the risk of confiscation of its property, and the imprisonment for long terms in jails and penitentiaries of its officers, agents and employés, and for that reason your Orator alleges that said Acts of April 4 and April 18, 1907, and each of said Acts, denies to the defendant Railway Company and its stockholders, including the complainant, the equal protection of the laws and deprives it and them of their property without due process of law, and are, and each of said Acts is, for that reason, unconstitutional and void."

WILLIAM SHILLABER,
By WILLIAM D. MITCHELL,
His Solicitor.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

86 STATE OF MINNESOTA,
County of Ramsey, ss:

I, William D. Mitchell, on oath say that I am one of the solicitors for the complainant in the above entitled bill; that I have read the said bill and know the contents thereof; that the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

WILLIAM D. MITCHELL.

Subscribed and sworn to before me this 3rd day of August, 1907.
[NOTARIAL SEAL.] ELEANOR TIGHE,
Notary Public, Ramsey County, Minn.

My Commission expires Sept. 25, 1908.

Endorsement: Order and Amendments to Bill of Complaint. Filed August 5th, 1907. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

87 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Demurrer.

Demurrer of Ira B. Mills, Charles F. Staples and William E. Young.

Now come the above named defendants, Ira B. Mills, Charles F. Staples and William E. Young, jointly with each other but separately so far as concerns any of the other defendants named in said bill, and by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:—

I.

That said bill herein filed does not state any matter of equity entitling complainant to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainant to any relief against these defendants.

And these defendants for special grounds of demurrer further show:—

II.

That it appears by the said bill that the same is exhibited
88 against these defendants and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, these defendants are not in any manner interested or concerned, and that the said bill is altogether multifarious.

III.

That it appears by the said bill that the same is exhibited against these defendants as, and only as, members of and constituting the Railroad & Warehouse Commission of the State of Minnesota, and that the relief sought as against these defendants, is the judicial restraint of the executive action of these defendants.

IV.

That it appears by the said bill, that in so far as the same is exhibited against these defendants, it is in truth and effect exhibited against the State of Minnesota, and that this suit is in truth and effect one against the State of Minnesota, and commenced against it without its consent, and that this Court therefore has no jurisdiction to entertain the same.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants do demur thereto and humbly demand the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

E. T. YOUNG,
C. S. JELLEY,
GEORGE T. SIMPSON,
R. A. STONE,
T. D. O'BRIEN,
Solicitors for Defendants Mills, Staples and Young.

89 I, R. A. Stone, one of the Solicitors of the Defendants Ira B. Mills, Charles F. Staples and William E. Young, in the above entitled cause, Do Hereby Certify that the foregoing Demurrer, in my opinion, is well founded in law.

R. A. STONE, *Solicitor.*

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Ira B. Mills, one of the Defendants in the above entitled cause, and joining in the foregoing Demurrer, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

IRA B. MILLS.

Subscribed and sworn to before me this 13th day of July, A. D. 1907.

THOS. YAPP,
Notary Public, Ramsey County, Minnesota.

My Commission expires May 1st, 1913.

Endorsement: Demurrer of Ira B. Mills, Charles F. Staples and William E. Young. Filed August 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

90 Circuit Court of the United States, District of Minnesota, Third Division.

In Equity.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

Demurrer of Edward T. Young.

The Demurrer of the Defendant Edward T. Young

Now comes the above named defendant, Edward T. Young, separately and by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, does demur thereto and for cause of demurrer shows:

I.

That said bill herein filed does not state any matter of equity entitling complainant to the relief prayed for, nor are the facts as stated in said bill sufficient to entitle the complainant to any relief against this defendant.

And this defendant for special grounds of demurrer further shows:

II.

That it appears by the said bill that this cause is in truth and effect a suit against the State of Minnesota commenced without its
91 consent, and therefore in violation of the Eleventh Amendment to the Constitution of the United States.

III.

That it appears by the said bill that the same is exhibited against this defendant as, and only as, the Attorney General of the State of Minnesota, and that the relief sought as against this defendant, is the judicial control and restraint of the executive and discretionary action of this defendant in his official capacity aforesaid, and not otherwise.

IV.

That it appears by the said bill that the same is exhibited against this defendant and the several other defendants therein named, for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant does demur thereto, and humbly demand the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG.

THOS. D. O'BRIEN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for said Defendant.

92 I, R. A. Stone, one of the Solicitors for the Defendant Edward T. Young in the above entitled cause, do hereby certify that the foregoing Demurrer, in my opinion, is well founded in law.

R. A. STONE.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Edward T. Young, one of the Defendants in the above entitled cause, being duly sworn, do say, that the foregoing Demurrer is not interposed for delay.

EDWARD T. YOUNG.

Subscribed and sworn to before me this 16th day of July, A. D. 1907.

[SEAL.] C. LOUIS WEEKS,
Notary Public, Hennepin County, Minnesota.

My Commission expires May 17th, 1912.

Endorsement: Demurrer of Edward T. Young. Filed August 5th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

93 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

It is hereby stipulated that the demurrers to the Bill of Complaint heretofore interposed herein shall be brought on for argument before the above entitled Court on the 3rd of September, 1907, in the same manner and to the same effect as if the same had been duly set down for argument according to the usual course of procedure.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.
GEORGE T. SIMPSON,
Solicitor for Demurrants.

Endorsement: Stipulation. Filed August 30th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

94 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

Answer.

The joint and several answer of the defendants Ira B. Mills, Charles F. Staples and William E. Young, to the bill of complaint of the complainant above named, respectfully shows:

These defendants now and at all times hereafter, saving and reserving unto themselves and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, say:

95 I.

They admit the residence and citizenship of the complainant to be as alleged in the complaint. That the defendant, the Minneapolis and St. Louis Railroad Company is a corporation organized under the laws of the State of Minnesota. That the defendant Edward T. Young is a resident and citizen of the State of Minnesota

and is the Attorney General of said State. That these defendants are the members of and constitute the Railroad & Warehouse Commission of the State of Minnesota, and are residents and citizens of said State.

They admit that the defendant Railroad Company is operating lines of railway as a common carrier of passengers and freight in and through the State of Minnesota and the other states named in the Bill of Complaint.

II.

These defendants admit that the lines of railway operated by the defendant Railroad Company are operated as one entire system and upon information and belief allege that the stock and bonds of said Company outstanding represent said whole system; they admit that a large part of the business of said defendant Railroad Company is the transportation of interstate commerce, but these defendants deny that there is any necessary confusion or intermingling of the business transacted by said Railroad Company, which is wholly local to each of the States in which it operates, with that which is interstate commerce, and allege that the amount and character of each, and the cost and productiveness of each, are entirely capable of being segregated and ascertained, and that the same have been so segregated and ascertained as a matter of common practice amongst railroads for many years past.

III.

They believe and allege that a portion of defendant Rail-
96 road Company's lines have been judiciously located, but defendants have been informed and believe that certain of said lines have not been, and therefore they allege that a large part of said defendant's said lines have not been judiciously located.

IV.

They are informed and believe it to be true, that the par value of the stock and bonds outstanding on account of said defendant Railroad Company's said lines is greatly in excess of the actual original cost of constructing and equipping the same, and much greater than the cost of reproducing the said lines and equipment would be, and much greater than the present value of the same, and that the original cost per mile of constructing and equipping that portion of said Company's lines within the State of Minnesota, is much less than the cost per mile as to the part of said lines which are without the State of Minnesota.

V.

Further answering these defendants aver that prior to the 6th day of September, 1906, in their official capacity as aforesaid, they made an exhaustive investigation of the so-called merchandise rates charged by the defendant, the Minneapolis and St. Louis Railroad Company, and other railroads in the State of Minnesota, for the

transportation between points in Minnesota, of the merchandise of the kind, quality and class described in Exhibit A, attached to the complainant's bill of complaint. Pursuant to the statute in such case made and provided, they conducted hearings in the course of said investigation, due notice of the same having been given to the railway companies interested. That the defendant Railroad Company duly appeared, answered and took part in said proceeding, and the Railroad & Warehouse Commission of the State of Minnesota then and there had full jurisdiction and authority, both of the subject matter of said investigation and of said
97 defendant Railroad Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal rates for the transportation between stations in the State of Minnesota by common carriers, of merchandise of the kind and class described in Exhibit A; and these defendants as members of and constituting said Commission, duly heard and gave due consideration to the voluminous and comprehensive evidence, much of which was submitted by and on behalf of said defendant Railroad Company, and as a result of said investigation and their consideration of the evidence adduced therein, defendants constituting the Railroad & Warehouse Commission as aforesaid, on the 6th day of September, 1906, made the Order referred to and complained of in said bill of complaint, and in and by said Order fixed the schedule of rates in said bill of complaint referred to and complained of, and set forth in and by said Exhibit A, which said Exhibit A is hereby admitted to be a true and correct copy of the Order made on said day, and schedule referred to in said Order of September 6th, 1906.

VI.

That defendants, in pursuance of their official duties in the premises, made said Order by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information, they were informed and convinced, and they now believe and allege, that the rates theretofore charged by said defendant Railroad Company for the transportation of said commodities between stations in Minnesota, were, on said Sept. 6th, 1906, and theretofore, unequal, unjust, unreasonable and excessive, exacting from the public an unreasonably large sum for the services rendered and yielding to said Railroad Company an unreasonably high return, in that said rates, together with said defendant company's other receipts from traffic local to Minnesota, produced a sum
98 considerably more than sufficient to pay the cost of handling said traffic, together with a fair return on the value of the property devoted to the same.

VII.

That defendants, acting solely as the Railroad & Warehouse Commission of the State of Minnesota, were further induced to make the said Order by reason of the fact that after considering the evidence adduced at the said hearings, and other competent and sufficient

information, they were informed and convinced, and now allege believing it to be true, that the rates so fixed by them in their said Order of Sept. 6th, 1906, and the accompanying schedule, upon the merchandise and articles therein named, for the transportation of the same between points in the State of Minnesota, were then, and are now, in every respect, equal, just and reasonable as to the said defendant Railroad Company and the complainant herein as a stockholder of said defendant Railroad Company, and of the other stockholders of said Company; and the defendants now aver that the said rates yield to said defendant Railroad Company a fair return upon the present value of its property, including both its lines and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be ascertained, having due regard for the original cost of construction of said lines and other property, the amount expended in permanent improvements thereof, the amount and market value of said Company's stocks and bonds, and the present as compared with the original cost of construction, the probable earning capacity of the property under said rates, and the sum required to meet the necessary and lawful operating expenses of said Company, together with all other elements affecting the value of said property, which are proper to be considered.

99

VIII.

Further answering these defendants respectfully aver and submit, that the Order of Sept. 6th, and the said Act of April 18th, 1907, relate to and affect the carriage of freight exclusively within the State of Minnesota and between points therein, and that they do not purport to, nor do they in any manner, affect or burden interstate commerce, and these defendants deny that the existence or maintenance of the rates provided in said Order and Act can in any manner affect, change or lower any other rate or rates maintained by said defendant Railroad Company, which are just and reasonable; nor can the same constitute discrimination as to any other rate, if such rate is just and reasonable in itself; nor effect, nor constitute discrimination as to any interstate rate maintained by defendant Railroad Company whether the latter is reasonable or otherwise.

IX.

These defendants admit that if the said Order of September 6th, 1906, did not permit rates, or if either of the Acts of the Legislature set forth and complained of in said bill of complaint, did not in and of itself permit rates which would yield to defendant Railroad Company, a return sufficient to pay the cost of the service required in transacting the business to which said rates are applicable, together with a fair return upon the value of the property devoted by said Company to said traffic, and the convenience and use of the public therein, the result of enforcing any such order or law and thereby compelling the defendant Railroad Company to accept insufficient compensation for the service rendered, would be, as complainant alleges, a confiscation of its property, a taking thereof without due

process of law, and a denial as to said Company and its stockholders of the equal protection of the law, and violative of the Con-
100 stitution of the United States and especially the Fourteenth Amendment thereof.

Further answering, these defendants allege, that the rates provided in and by said Order of September 6th, 1906, are equal and just, and are more than adequate for the service performed; and that, after ample and full consideration of said rates by the defendant Railroad Company, its officers, agents and directors, and as these defendants believe, by the complainant, the said rates were duly accepted, adopted and promulgated by said defendant Railroad Company and went into full force and effect on or about the 15th day of November, 1906, and have ever since been maintained and used by said Company as its regular and duly published rates for the transportation of the merchandise described in Exhibit A, between stations in the State of Minnesota, and no objection or protest was made against the same by the defendant Railroad Company, this complainant, or any other person, until the passage of the Acts of the Legislature mentioned in said bill of complaint and hereinafter referred to.

X.

That no application for permission to change or raise said rates has been made to the Railroad & Warehouse Commission of the State of Minnesota by the defendant Railroad Company, or the complainant, or any other persons, since the same went into effect on November 15th, 1906.

XI.

These defendants further aver, that, as provided by the statutes of the State of Minnesota, the defendant Railroad Company had the right to appeal to the District Court of the State of Minnesota from the Order of the Commission so entered on Sept. 6th, 1906, within thirty days after the making thereof; that said District Court is a court of record and general jurisdiction, duly organized and
101 existing under the Constitution and Laws of the State of Minnesota, and having and exercising all the powers of a court of chancery and a court of common law, as the same are known and recognized under our system of jurisprudence; and said Court is fully authorized and empowered to entertain and consider actions and defenses, both legal and equitable. That had such appeal been taken, the equality, justness and reasonableness of the rates heretofore maintained by said defendant Company, as well as those fixed by the Order of the Commission in said Order of Sept. 6th, 1906, would have been for trial before said Court de novo, and upon such trial the order and findings of said Commission would have been only prima facie correct; that in said proceeding and upon said appeal, all of the rights of said complainant would have been protected and every objection to the Order of said Commission, and every consideration which might be urged in opposition thereto, which may, can or might be urged in this action, could and would have been considered by said District Court on said appeal. That as

these defendants are informed and believe, no demand was ever made by said complainant, upon said defendant Railroad Company, its officers, agents or directors to appeal from the Order of said Commission made and entered on Sept. 6th, 1906, or to take any step in relation thereto to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

XII.

These defendants admit that if no appeal had been taken from the Order of said Commission, and if the defendant Railroad Company had not itself adopted and published the Order of said Commission hereinbefore referred to, nor have filed with said Commission its schedules of the rates and charges required by said Order of said Commission, these defendants as such Commission, would have, except for the Order of this Court, issued in this action, pro-
102 ceeded, upon the expiration of said time for appeal, to publish and promulgate said Order, as provided by the statutes of the State of Minnesota, and thereafter had the defendant Railroad Company still refused to comply with said Order, these defendants as such Commission would have demanded of the Attorney General of the State of Minnesota, that he commence an action by mandamus in said District Court, in the name of the State of Minnesota and upon the relation of these defendants, to the end that the judgment of said Court might be obtained directing and commanding the defendant Railroad Company to comply with the terms and provisions of said Order; that no other or different proceedings were ever contemplated, intended or threatened by these defendants, or so far as these defendants know, by any other person. That as these defendants are advised, the proceeding above described is the only proceeding which these defendants could take for the purpose of enforcing the Order of the Commission dated Sept. 6th, 1906, hereinbefore referred to, and that until the rendition of final judgment in said proceedings by mandamus, the defendant Railroad Company, its officers, servants and agents, are subject to no fine or penalty, through, by or on account of said Order whatever; nor is said Company in any manner subject to harassing litigation of any kind or to a multiplicity of suits by reason thereof.

XIII.

That in the proceeding by mandamus hereinbefore described as contemplated by these defendants, the Order of the Commission would be only prima facie correct, and the defendant Railroad Company would have full and adequate means and opportunity to defend against the same, and to urge in such defense every consideration of law and equity, and every fact which the complainant might or could present to this Honorable Court on the trial of this action upon its merits. That said defendants are, as they are
103 advised, confined to said proceedings by the statutes of the State of Minnesota, and that any other person attempting to bring an action to compel the defendant Railroad Company to com-

ply with said Order, is confined to a like proceeding, and that it is not true that unless this Court entertains this action and enjoins these defendants as prayed in the bill of complaint herein, that the complainant or said defendant Railroad Company will be compelled to defend their rights in a multitude of actions and proceedings, or that he or it will be in any manner deprived of any defense, or even hampered in maintaining each and every defense which it may have to the Order of the Commission entered Sept. 6th, 1906, hereinbefore specified.

XIV.

Further answering these defendants admit that on or about the 4th day of April, 1907, there was approved an Act of the legislature of the State of Minnesota, entitled—"An Act prescribing the maximum rate to be charged for the transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof," and that a copy of said Act is attached to said bill of complaint marked Exhibit B; and these defendants further admit that on or about the 18th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad & Warehouse Commission," a copy of which is attached to said bill of complaint marked Exhibit C.

XV.

These defendants aver that as provided by the statutes of the State of Minnesota, they have not, nor have either of them, any duty official or otherwise, as members of the Railroad & Warehouse Commission, or otherwise, in connection with the maintenance or enforcement of said Acts of the Legislature, and they deny that they,
104 or either of them, as members of said Railroad & Warehouse Commission, or otherwise, have contemplated or intended or threatened to bring any action or proceeding, or take any steps whatever, looking to the enforcement of the provisions of said Acts of the Legislature and they aver that no application has ever been made to them, or either of them, by the complainant or by said defendant Railroad Company, its officers or agents, requesting the exercise by them of their right to modify or change any of the rates or charges provided for by said Acts of the Legislature.

XVI.

Further answering these defendants aver that for many years last past the rates charged by the defendant Railroad Company for the transportation of passengers within the State of Minnesota have been unequal, unjust and exorbitant, and that the rates and charges fixed and specified in said Act of the Legislature of April 4th, 1907, for the transportation of passengers within the State of Minnesota, are equal, just and reasonable, and if enforced the same will afford to the defendant Railroad Company and its stockholders, an ample

revenue to pay the necessary cost and expense of conducting said business, together with the proportion of the fixed charges of said defendant Railroad Company properly chargeable to said passenger service, and such proper proportion of all of the other legitimate and proper expenses of said defendant Railroad Company chargeable thereto, and to yield to said Company and its stockholders a fair and adequate return upon the value of the property invested in said business. And these defendants respectfully aver that the said Act of April 4th, 1907, relates to and affects the transportation of passengers exclusively within the State of Minnesota and between points therein, and that it does not purport to, nor does it in any manner, affect or burden interstate commerce, and these defendants deny that the existence or maintenance of the rates provided in said Act
105 can in any manner affect, change or lower any other rate or rates maintained by said defendant Railroad Company, which is, or are, just and reasonable; nor can the same constitute discrimination as to any other rate or rates, if such other rate or rates is or are, just and reasonable in itself; nor affect, nor constitute discrimination as to any interstate rate maintained by the defendant Railroad Company, whether the latter is reasonable or otherwise.

XVII.

That prior to the 18th day of April, 1907, the rates and charges made by the defendant Railroad Company for the transportation between stations within the State of Minnesota, of the commodities named in said Act of April 18th, 1907, were unjust, unequal and extortionate, and were much higher proportionately than the charges made by said Railroad Company for the transportation of other freight upon its lines within the State of Minnesota and elsewhere; That the rates and charges fixed and provided by said Act of the Legislature of April 18th, 1907, are just, equal and reasonable as applied to said defendant Railroad Company and its stockholders, and in truth and in fact are proportionately still higher than the rates and charges fixed by said Railroad Company for like services in the transportation of other freight in the State of Minnesota and elsewhere, and that the rates and charges so fixed by said Act of the Legislature are sufficient to give to said defendant Railroad Company and its stockholders, a revenue proportionately sufficient with its other revenues, to permit it to meet its operating expenses, fixed charges and all other proper and necessary expenses in connection with the operation of said Railroad Company, and in addition thereto, a fair and adequate return upon the value of the property invested in the business of said Railroad Company.

XVIII.

106 Further answering these defendants aver, upon information and belief, that no sufficient demand was ever made by the complainant upon the defendant Railroad Company, its officers or directors, requesting the institution of any legal proceedings in the name of the defendant Company, to test the reasonableness or validity of either the Order of the Railroad & Warehouse Commission or the Acts of

the Legislature mentioned in said bill of complaint, and they aver upon information and belief, that this suit is wholly collusive, and is brought, not for the purpose of ascertaining in a speedy and orderly manner the sufficiency of the rates and charges specified in said Order and Laws, but for the purpose of hindering, delaying and obstructing the public officers of the State of Minnesota, charged with duties in connection therewith, in the performance of such duties.

XIX.

Defendants on their information and belief, deny that the expense of performing the service of transportation of local traffic between stations in the State of Minnesota is as great as the cost of handling and transporting such traffic in several other states through which said defendant's lines of railway run. Defendants further deny that the rates for intra-state business per mile of haul should be, or are, in all cases greater than the rates per mile upon interstate business, and allege that if such comparison is to be made in any case resort must be had to all the facts and circumstances surrounding the traffic in question.

Defendants admit that the defendant Railroad Company's operating and other expenses have increased to some extent during the last few years; but on information and belief deny that the said expenses have increased to the extent therein alleged. Defendants admit that during the eighteen months, or thereabouts, next
107 preceding the commencement of this suit, the cost of material used in the construction, renewal and repair of railroads has increased, but defendants deny that the percentage of increase is as great as is alleged in complainant's bill of complaint, and on the contrary allege that the percentage of increase in the cost thereof is much less than is in said bill of complaint alleged. Defendants specifically deny that the gross earnings taxes paid by the defendant Company to the State of Minnesota for the year 1906 were thirty-three per cent greater than were the taxes paid by it for the year 1905, but allege on the contrary that the taxes paid by said defendant Company for the year 1905 were greater and amounted to more than the taxes for the year 1906. Defendants admit that the taxes paid by the defendant Company to the State of Minnesota for the years 1905 and 1906 were about thirty-three per cent greater than the taxes paid for the years 1903 and 1904. Defendants on information and belief, deny that the expenses of economically operating the defendant Company's railroad, together with taxes, consume sixty-two per cent of its gross earnings, but allege that the percentage of the gross earnings which will be so consumed if said railroad is economically operated and managed will be much less than sixty-two per cent, and defendants pray that complainant be required to make proof thereof.

Defendant aver that the defendant Railroad Company's operating and other expenses, both as to traffic local to the State of Minnesota, and its intrestate traffic, and traffic in other states, for many years, have been and now are, largely and unlawfully increased by unjustifiable and unauthorized expenditures of the funds of said Com-

pany for purposes not authorized by law or the charter of defendant Railroad Company, the exact amount or precise nature of such unauthorized expenditures being now unknown to the defend-
108 ants. Defendants allege that if defendant Railroad Company's said lines within the State of Minnesota, as well as all other lines owned and operated by it, had been economically conducted and operated, the same would, so far as the same were judiciously located and built in response to a public necessity and demand therefor, have paid and returned to the defendant Railroad Company a fair return on the value thereof, after deducting the expense of operating the same including such proportion of the fixed charges and expenses of said Railroad Company properly chargeable thereto, and taking into consideration all other elements proper to be considered therewith. Defendants further allege that in truth and in fact such Railroad Company has earned sufficient sums to pay all of its necessary operating and other expenses and a large return on the capital actually invested therein, and that if the said Order of Sept. 6th, 1906, and the said Acts described in and complained of in the bill of complaint are enforced, said Railroad Company will still, by a proper and fair adjustment of its rates and charges, be enabled in the future to meet its necessary operating and other expenses and expenditures, and in addition thereto, pay to its stockholders a fair return on the value of the said road and its equipment. Defendants allege that they have no knowledge or information sufficient to form a belief as to whether the gross earnings of the defendant Company, its operating expenses, taxes and interest, on its funded debt and rentals for the fiscal year ending June 30, 1906, and the net earnings derived therefrom, were of the amounts respectively alleged in Paragraph XVII of complainant's bill of complaint; and these defendants pray that complainant be required to make proof thereof if the same is necessary or material.

XX.

Further answering these defendants aver that the defend-
109 ant Company's lines of railroad in the State of Minnesota are situated in a thriving and rapidly growing section of the State, and the volume of traffic upon said railway, particularly its passenger traffic, and in the commodities referred to in the Order of said Commission of September 6th, 1906, and the act of the Legislature of April 18th, 1907, will be necessarily greatly increased in the near future; that said freight commodities are of a class and character which enable them to be transported at a very slight cost, as compared with other classes of freight, but notwithstanding that, these defendants charge the fact to be that under the tariffs and charges heretofore maintained by the defendant Company, the freights named in said Order and said Act of the Legislature were compelled to yield an unequal and unfair proportion of the entire earnings of said Company from the operation of its lines of road local to the State of Minnesota. These defendants deny that the application of the schedule of rates prescribed by the order of Sept. 6th, 1906, and the Acts of April 4th, 1907, and April 18th, 1907,

to the defendant Railroad Company's merchandise, commodity and passenger traffic for the year ending June 30th, 1906, would have effected a reduction of the earnings of said Company to the amount set forth in complainant's bill; Defendants admit that the application thereof to such business would have effected a reduction therein, but allege on informataion and belief that such reduction would have been much less than as is in said bill of complaint alleged, and these defendants pray that complainant be required to make proof thereof.

These defendants further allege that the rates fixed and prescribed by the Order of April 6th, 1906, and the Act of April 18th, 1907, are entire rates for the services to which they respectively refer, and are not susceptible of being subdivided or any part thereof separately apportioned to any part of a particular haul, as
110 is attempted to be done in complainant's bill of complaint herein; and in determining the fairness thereof any given rate should and of right ought to be considered as applying to the entire haul for which it is prescribed.

XXI.

Further answering these defendants deny that the jurisdiction of this Court ought to have been, or can be invoked, in this case, and they further deny that said complainant is entitled to the relief, or any part thereof, that his said bill of complaint demandeth.

These defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint, not admitting, however, that there is any other matter or thing in said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, true to the knowledge or belief of these defendants, or either of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

IRA B. MILLS,
CHARLES F. STAPLES,
WILLIAM E. YOUNG,
Defendants.

E. T. YOUNG,
T. D. O'BRIEN,
GEORGE T. SIMPSON,
ROYAL A. STONE,
C. S. JELLEY,
Solicitors for Defendants.

Endorsement: Answer of Ira B. Mills, Charles F. Staples and William E. Young. Filed September 3, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

111 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 3D, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS and DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY, EDWARD T. YOUNG, Charles F. Staples, Ira B. Mills, William E. Young, E. A. Evarts, Achille Michaud, O. J. Whiteman, J. Rumsey Reeve, Charles Michaud, and Adolph Michaud.

C. Equity. No. 858.

JOHN S. KENNEDY and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Parson, Tom Gunness, and S. S. Glarum.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, EDWARD T. YOUNG, Ira B. Mills, Charles F. Staples, and William E. Young.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY, EDWARD T. YOUNG, IRA B. Mills, Charles F. Staples, William E. Young, Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness & S. S. Glarum.

This day come the parties to the above entitled causes by their respective solicitors, Messrs. Jared How, Pierce Butler, Edward S. Robert, Robert Thorne, Stiles W. Burr, John F. McGee,
112 appearing on behalf of the complainants and Messrs. Edward T. Young, Thomas D. O'Brien, Royal A. Stone, C. S. Jelley and George T. Simpson, appearing on behalf of the defend-

ants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young and C. W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company, William R. Begg, appearing on behalf of the defendant Great Northern Railway Company, F. W. Root, appearing on behalf of the defendant Chicago, Milwaukee & St. Paul, Railway Company, Samuel A. Lynde, appearing on behalf of the defendant Chicago and Northwestern Railway Company, Thomas Wilson, appearing on behalf of the defendant, Chicago, St. Paul, Minneapolis & Omaha Railway Company, George W. Seever appearing on behalf of the defendant Minneapolis & St. Louis Railway Company, A. G. Briggs, appearing on behalf of the defendants Chicago Great Western Railway Company, A. B. & S. Stickney, Ansel Oppenheim, L. S. Cass, Wm. E. Pickney, L. P. Elmer F. Weyerhauser, J. W. Lusk, R. C. Wright and H. Fletcher, *a* and Alfred E. Boyesen appearing on behalf of the defendant Northwestern Fuel Company, Alfred H. Bright appearing on behalf of the defendant Minneapolis, St. Paul & Sault Ste Marie Railway Company, McNeil V. Seymour appearing on behalf of the defendant Chicago, Rock Island and Pacific Railway Company, and the same coming now on for hearing upon the orders to show cause heretofore issued in each of said causes, on the 29th and 31st day of May A. D. 1907, returnable on the 8th day of July A. D. 1907, and an order to show cause issued on the 19th day of August A. D. 1907, returnable on the 3rd day of September A. D. 1907, and which said orders to show cause were on the 8th day of July A. D. 1907, and thereafter postponed and continued for hearing from time to time to this time and place, and now coming on to be heard, upon the agreement and consent of the solicitors for the respective parties to the above entitled causes, it is by the Court ordered that the affidavits heretofore filed on behalf of the respective parties thereto may be used in each of said causes so far as the same are applicable thereto and that the arguments to be made by the respective solicitors hereto may be
113 considered as applying to al-, of said causes so far as the same are applicable thereto and to the individual causes represented by said solicitors so far as directed thereto.

Mr. Jared How thereupon opens, states and argues said causes to the Court upon the said orders to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Stiles W. Burr argues further upon the orders to show cause and application for a temporary injunction on behalf o*g* the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler argues further upon the application for a temporary injunction and orders to show cause on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

114 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 4TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon the order to show cause and application for a temporary injunction on behalf
115 of the complainants.

And the trial of said cause not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

116 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 5TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and

application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Pierce Butler resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues upon the order to show cause and application for a temporary injunction on behalf of the complainants.

117 And the hearing of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

118 United States Circuit Court for the District of Minnesota, Third Division.
Term Minutes, June Term, A. D. 1907.

SEPT. 6TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

C. Equity. No. 875.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Robert Thorne resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. John McGee argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

119 Mr. John F. McGee resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

120 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 9TH, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. John F. McGee resumes and concludes his argument upon the order to show cause and application for a temporary injunction on behalf of the complainants:

Mr. Stiles W. Burr argues further upon the order to show cause and application for a temporary injunction, on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The court resumes proceedings at two o'clock P. M.

121 Mr. Edward S. Robert argues upon said order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues further upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

122 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 10TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Jared How argues further upon order to show cause and application for a temporary injunction on behalf of the complainants.

Stiles W. Burr, Esq., argues further upon said order to show cause and application for a temporary injunction on behalf of the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

123 Mr. Stiles W. Burr, resumes and concludes his argument upon said order to show cause and application for a temporary injunction in behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until to-morrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

124 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 11TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien opens, states and argues upon said order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
125 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

126 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 12TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon said
127 order to show cause and application for a temporary injunction on behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

128 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, Term of June, A. D. 1907.

SEPT. 13TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Thomas D. O'Brien resumes his argument upon the order to show cause and application for a temporary injunction on
129 behalf of Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at ten o'clock.

Ordered: That this Court do now adjourn until next Monday morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

130 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 16TH, 1907.

Monday morning.—Court opened pursuant to adjournment:

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Thomas D. O'Brien resumes and concludes his argument upon the order to show cause and application for a temporary injunction therein on behalf of the defendants Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

Mr. F. H. Peterson argues upon the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

131 The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. F. H. Peterson resumes and concludes his argument on the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

Mr. Royal A. Stone argues upon said order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

On motion of Mr. Royal A. Stone, — is by the Court ordered that the appearance of Mr. F. H. Peterson as an additional solicitor on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young, be and the same hereby is entered of record.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

132 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 17TH, 1907.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Royal A. Stone resumes and continues his argument upon the order to show cause and application for a temporary injunction on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples and William E. Young.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Royal A. Stone resumes and concludes his argument on the order to show cause and application for a temporary injunc-
133 tion on behalf of the defendants, Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

134 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 18TH, 1907.

Wednesday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Edward T. Young argues upon the order to show cause and application for a temporary injunction on behalf of himself and the defendants Ira B. Mills, Charles F. Staples and William E. Young.

Mr. Thomas Wilson argues upon the said order to show cause and application for a temporary injunction on behalf of the defendant, The Chicago, St. Paul, Minneapolis & Omaha Railway Company,

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Robert Thorne argues in reply upon the said order to show cause and application for a temporary injunction on behalf of the complainants.

135 And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest: HENRY D. LANG, *Clerk.*

136 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 19TH, 1907.

Thursday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction thereis is resumed and continued as follows, to-wit:

Mr. John F. McGee argues in reply upon the order to show cause and application for a temporary injunction on behalf o*g* the complainants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward S. Roberts argues in reply upon the said order to Show cause and application for a temporary injunction on behalf of the complainants.

137 Mr. Pierce Butler argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

And the trial of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until to-morrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk.*

138 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 20TH, 1907.

Friday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day comes again the parties to these causes by their respective solicitors and the hearing upon the order to show cause and application for a temporary injunction therein is resumed and continued as follows, to-wit:

Mr. Stiles W. Burr argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

Mr. Jared How argues in reply upon the order to show cause and application for a temporary injunction on behalf of the complainants.

139 Mr. T. D. O'Brien argues upon the order to show cause and application for a temporary injunction on behalf of the defendants.

The Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

And now having heard the arguments and statements of the solicitors for the respective parties to the above entitled cause upon the said order to show cause and application for a temporary injunction, and being fully advised in the premises, upon due consideration thereof, the Court renders an oral decision, directing that the same be transcribed and filed and that the solicitors for the respective parties hereto prepare orders in accordance therewith to be signed filed and entered.

Ordered: That the Court do now adjourn until Monday morning next at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

140 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1907.

SEPT. 23RD, 1907.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Henry D. Lang, Clerk.

C. Equity. No. 857.

CHARLES E. PERKINS et al.
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

C. Equity. No. 858.

JOHN S. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

C. Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

C. Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

This day come the parties to these causes by their respective solicitors, and in accordance with the decision heretofore rendered and entered herein, it is by the Court ordered, that the demurrers of the defendants, and each of them, in the above entitled causes be and the same hereby are overruled, and that the said defendants in said causes, and each of them, other than the defendants Ira B. Mills, Charles F. Staples and William E. Young, have until the rule day in November within which to file their answer to the bills of complaint in said causes and each of them.

* * * * * * *

141 Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

142 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Upon motion by counsel for complainants, and upon reading affidavits in support thereof and in opposition thereto, and after hearing counsel for complainants and for defendants,

This Court doth order that the defendant Minneapolis & St. Louis Railroad Company, its officers, directors, agents, servants and employés, and each of them, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this Court in the premises, from publishing, adopting, or putting into effect the tariffs, rates or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That the defendant Edward T. Young, as Attorney General of said State of Minnesota, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this
143 Court in the premises, from taking or instituting any action, suit, step or proceeding to enforce the penalties and remedies specified in said Act or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof;

That all other persons, and each of them, from and after the time that they shall have knowledge of this Order, be restrained and enjoined, pending the final hearing of this cause, and until the further order of this Court in the premises, from taking or instituting, or causing or advising to be instituted any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them.

Let a writ issue accordingly.

WM. LOCHREN, *Judge.*

Dated September 23, 1907.

Endorsement: Order for Temporary Injunction. Filed September 23, 1907. Henry D. Lang, Clerk.

144 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein-named Edward T. Young as Attorney General for the State of Minnesota, by handing to and leaving a true and correct copy thereof with him and by exhibiting to him the Court Seal and Clerk's Signature on the original writ, personally, at the City of Saint Paul in said District on the 24th day of September, A. D. 1907.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By T. J. SHEEHAN, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on the therein-named The Minneapolis & St. Louis Railroad Company, by handing to and leaving a true and correct copy thereof with George W. Stevers, General Counsel for the Minneapolis & St. Louis R. R. Co., personally, at Minneapolis in said District on the Thirtieth day of September, A. D. 1907.

WILLIAM GRIMSHAW,
U. S. Marshal,
By LEONE RICH, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Writ of Injunction on James Manahan, Geo. S. Loftus, J. C. Applegate, John H. Gross, B. E. Sundberg, and Julius J. Ritter, members of the Shippers Association, by handing to and leaving a true and correct copy thereof with each of them and exhibiting the Clerk's Seal and Signature on the original, personally, at St. Paul in said District on the 25th day of September, A. D. 1907.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

145 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

The President of the United States of America to The Minneapolis & St. Louis Railroad Company, its officers, directors, agents, servants and employés, and each of them; Edward T. Young, as Attorney General of the State of Minnesota, and all other persons and each of them, from and after the time that they shall have knowledge of the Order for a temporary injunction herein, Greeting:

Whereas, in the above entitled cause depending in the Cidcuit Court of the United States for the District of Minnesota, Third Division, in Equity, an Order was made and entered by said Court under date September 23, 1907, directing that a writ of injunction issue restraining and enjoining, pending the final hearing of this cause, and until the further order of the court in the premises, the defendants above named, and each of them, and all other persons and each of them from and after the time that they shall have knowledge of such Order, from doing certain acts in said Order set forth, and hereinafter more particularly mentioned.

Now, therefore, know ye that the said The Minneapolis & St. Louis Railroad Company, its officers, directors, agents, servants and employés, and each of them, are enjoined and restrained, pending the final hearing of this cause, and until the further order of the
146 Court in the premises, from publishing, adopting or putting into effect the tariffs, rates or charges set forth in the Act of the Legislature of the State of Minnesota, approved April 18, 1907, and entitled "An Act Relating to Railroad Freight Rates in the State of Minnesota, and Defining Certain Duties of the Railroad and Warehouse Commission," or any thereof.

That you, Edward T. Young, as Attorney General of the State of

Minnesota, are, pending the final hearing of this cause, and until the further order of the Court in the premises, restrained and enjoined from taking or instituting any action, suit, step or proceeding to enforce the penalties and remedies specified in said Act, or either thereof, or to compel obedience to said Act or compliance therewith, or any part thereof.

That all other persons, and each of them, from and after the time that they shall have knowledge of said Order, are restrained and enjoined, pending the final hearing of this cause, and until the further order of the Court in the premises, from taking or instituting or causing or advising to be instituted any action, suit, step or proceeding for the violation of said Act, or from demanding that any of the rates contained therein be given to them or either of them.

Witness: The Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of September, 1907.

Issued at my office in the City of St. Paul, under the seal of said Circuit Court the day and year last aforesaid.

[SEAL.] HENRY D. LANG, *Clerk*.

Endorsement: Writ of Injunction. Filed October 7th, 1907. Henry D. Lang, Clerk, by Louise D. Trott, Deputy.

147 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER
vs.
MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY.

Decision on Application for a Temporary Injunction.

LOCHREN, *J.* (orally):

Gentlemen, I feel that it is a subject of congratulation that through this long-continued contest there has been such uniform courtesy displayed by counsel on both sides, not only towards the court, but towards each other. The cases have been fully and ably presented to the court, upon both sides. If circumstances permitted, I should be glad to give the cases further consideration than I feel myself able to. In view of the necessity of attending to other business, and especially in view of the fact that the October term in Minneapolis is coming on, I think it better that I dispose of the cases according to my first impressions than to detain them for further examination, which would hinder the ultimate settlement of the issues.

These suits have been brought by one or more stockholders of each of nine railroad companies doing business within the State of Minnesota, and each of them also engaged in interstate business, claiming that the rates fixed by the Railroad and Warehouse Commission, and which have been termed by counsel the "Merchandise rates," as well as the rates fixed by the legislature of the state by the act of April 4th of the present year (called the passenger rate law),

and the rates also fixed by the legislature by the act of April 18th of the present year (chapter 232 of the statutes of this year) are so low as to not afford adequate compensation to the railroad companies for the services that they are required to perform and a reasonable return upon the property which is invested by these railroad companies, and used in the business, and therefore are confiscatory under the provisions of the constitution of the United States that no state shall deprive any person of life, liberty or property without due process of law, or deny equality under the laws;

148 that the requiring of the railroad companies to do business at these rates would not afford adequate compensation, and are equivalent to taking their property without due process of law. These bills of complaint are met by demurrers upon various grounds, one of which is, that, being brought against the attorney general and other state officers, but especially the attorney general, they, in fact, amount to actions brought against the state, which are prohibited, so far as the federal courts are concerned, by the eleventh amendment to the constitution of the United States. This matter I disposed of at a preliminary hearing, contrary to that contention, holding that although the state is interested in this matter, these suits are not, in terms nor in necessary effect, actions against the state. No property of the state is affected; no revenues of the state are affected, by the result of the litigation. And although the eleventh amendment to the constitution prohibits suits, or actions, against the state, by citizens of another state or of a foreign country, the fourteenth amendment provides that the state shall not deprive any person of life, liberty or property without due process of law. There must be some way to enforce that provision of the constitution. It is a provision which requires no action of congress to make it effective. It is a prohibition against the state. And if the state, by any act attempts to deprive anyone of life, liberty or property, without due process of law, the courts must provide some adequate remedy for the protection of such person. It would be a reproach to the courts did they fail to provide an adequate remedy in a case of that sort. And it is unnecessary in these cases to hold that the eleventh amendment would be ineffective as against the later provision, in the fourteenth amendment, if the remedy can be reached in another way; and it seems to me that it can—by tying

149 the hands of the officers of the state, if necessary, in a proper action, and restraining them from attempting to enforce or put in effect a provision of the law of the state which is unconstitutional under the terms of the fourteenth amendment. This has been done in so many cases that it seems to me it does not now require argument to sustain that position. And I therefore hold that that ground of the demurrer is not well taken.

Another ground is that the bills are multifarious, in joining the Warehouse and Railroad Commission and the attorney general, because the acts complained of are separate and distinct acts and the acts of different bodies. The order of the Railroad and Warehouse Commission, of September 6th of last year, was promulgated by that commission under the authority of a legislative act; and, as has been decided in many cases, such an order has the same effect

as a legislative act; that is, that the legislature has a right to empower administrative bodies to act in respect to this matter of rates and other matters of regulation concerning public corporations engaged in the business of transportation, so that its order has the same effect as a legislative act. And the other two acts complained of are acts passed by the legislature. They all amount to legislation that has been put forth by the state. And it seems to me that complaints against all these acts may properly be joined in one action, and that the Railroad and Warehouse Commission have such charge in respect to the enforcement of these rates that they can properly be made defendants in an action of this kind, as well as the attorney general.

Another objection is that the bills do not show compliance with the 94th Equity Rule, such compliance being necessary to permit actions of this sort to be brought by stockholders, whereas, matters in which a corporation is concerned are properly under the
150 management only of the officers and directors of the corporation, who should ordinarily be parties to an action to enforce corporate rights, and providing that such suit will not be allowed to be maintained by a stockholder unless it appears that he has first applied to the officers and directors of the corporation, demanding that they should enforce the rights which he complains are being infringed, and secure the safety of his property, the property being, of course ultimately the property of the stockholders, and only upon their refusal to do so will he be allowed to bring an action to protect himself. It seems to me that that has been done sufficiently in these cases. In every one of them an application has been made, either to the directors or to the controlling officers of the corporation whose duty it would be, in a proper case, if it was necessary, to call a meeting of the directors to act upon the matter, and either where the directors have met together or where the matter has been disposed of by the officers, the stockholders have been met with a direct refusal to take any action to protect the property against these alleged illegal attacks upon it. The reason alleged by the officers of the company and by the directors for not taking such action was, not that they doubted or denied the claim of the stockholders that this order and these acts were confiscatory, and null and void under the constitution, but that by the provisions of the acts themselves such severe penalties were denounced for any attempted violation of the acts, that they ought not to be called upon to incur the danger of those penalties, and would not assume that danger, and, for that reason, would not act in the matter. And it seems to me, in view of the severe penalties denounced by these acts of the legislature, that the officers of the corporations could not have done otherwise than to have refused to act under those circumstances, where their
151 action would have laid them liable to severe penalties; and every subordinate who under their direction should attempt to violate these provisions, being also liable to like penalties, would also refuse. There is no question but that such legislation is vicious, almost a disgrace to the civilization of the age, and a reproach upon the intelligence and sense of justice of any legislature which could enact provisions of that kind. In case of the refusal to issue a ticket

at a certain rate which is fixed by the legislature as proper, but which the railroad companies hold to be void and unconstitutional, (and which would be an act of itself not immoral nor malum in se, but would ordinarily afford the person who was refused the privilege of a ticket a right of action against the railroad company,) in case he was in the right and the refusal was wrong, there would be no question but that in a civil action any such person would receive an adequate remedy; there would be no danger that any court or jury would refuse to give ample damages. Beyond question, the result of actions of that kind would be that the damages would almost certainly border on the excessive, instead of failing to remunerate the party for any wrong he would suffer on account of such a refusal. But under the provisions of these laws, acts not immoral or wrong in themselves, but which are only unlawful because prohibited, would entail upon the person refusing to comply with such laws the position of being convicted of a felony. They make the refusal a felony, and impose a punishment very unusual—a fine that might be to the amount of $5,000, or imprisonment in the state prison to the extent of five years, or both, in the discretion of the court; punishments which are applied only to the very highest crimes short of homicide of which men are ever guilty; pun-
152 ishments which would be deemed adequate in cases of burglary, highway robbery, or crimes of the highest character, short, as I say, of homicide. There is no doubt that the directors and officers of railroad companies were entirely justified in refusing to take the hazard that would fall upon them (and their employees, if they acted under their advice) by taking any steps to save the stockholders from the consequences of these laws.

I agree with counsel for the defendants that these matters must be considered separately. For instance, the order of the Commissioners of September 6, 1906, which went into effect on November 15th of the same year, must be considered by itself upon the charge that it did not afford adequate compensation to the railroad companies and had the effect of confiscating their property. If it did not have that effect, it would not have that effect if the subsequent acts added to it had that effect. And so with the act of April 4th—the passenger act. If that did not reduce the revenues of the companies to a degree which would leave them without sufficient compensation, even after the reducing effect of the order of the commissioners, then that would not be unconstitutional, it would be constitutional and proper. And the same remarks would apply to the act of April 18, which affected the rates chargeable upon commodities. It would have to be considered, of course, with reference to the reductions theretofore made by the two previous acts; but if that still left enough to compensate the railway companies for their services rendered in the transportation, and left an adequate return upon the value of the property which was used in the transportation within the state, the complainants would have no cause for complaint. But of course the latter act must be considered with reference to the reductions made in the earlier order and the
153 earlier act. Now, I will not attempt—it would be impossible that I should do so—to go through with the different esti-

mates that have been made in respect to the expenses of the railroads in the transportation of freight and passengers, state and interstate, and what is applicable to the state properly.

It is argued that this court has not jurisdiction of the case because it does not raise any federal question, for the reason that there is no controversy as to the effect of the constitutional provision in the fourteenth amendment, that I have referred to, because it is admitted on the part of the defense that the construction claimed for that provision by the complainants is the true construction and that there is no controversy in relation to it, and that the only controversy arising upon this hearing is in relation to matters of fact alone. With respect to that, I might say that there is not really any controversy in respect to matters of fact, until we come to the ultimate facts in the case. There is no controversy as to what the order of the Railroad and Warehouse Commission actually was; there is no controversy as to the terms of that order or its effect upon the different articles of merchandise in respect to which it fixes the rates; there is no controversy in relation to the purport of the two different acts of the legislature to which I have referred; there is no controversy with respect to the showing which has been made by the railroad companies as to the cost of transportation, their operating expenses in the past, and the anticipated increase in those expenses in the present year; nor is there any controversy with respect to the amount invested in these railroad properties, in the first place,—there has been no attempt to show that they are different from what they are claimed to be in the showing
154 made by the railroad companies themselves; nor with respect to the fixed charges, which are encumbrances upon these different properties, nor with respect to the amount of stock outstanding in these different companies. In relation to some of them, (the Chicago Great Western in particular) I believe that the evidence is that there are no outstanding bonds—anything which is usually reckoned by railroad companies as among their fixed charges; but it does appear that there are outstanding debentures, and that there are classes of preferred stock—several of them, each class in its order being allowed a certain amount of dividend before the next class in order would be entitled to any, and so on until we come to the common stock. And I am inclined to think that debentures of that kind, and preferred stock, which is entitled to dividends before anything goes to the common stock, are very much of the same nature as bonds or securities—which would be entitled to the payment of interest upon them before there would be any dividends on the preferred or common stock; that they are very much of the same character as these others which are reckoned under the head of fixed charges.

Now, the showings by the different railroad companies amount to this: That in the years past, including the year 1906, there was not enough revenue from the business carried on within the state, including business that was entirely local to the state and the share of the interstate business which would properly be chargeable to or applied upon the property of the railroad companies within the state, to entirely pay the fixed charges outstanding and

afford any adequate dividend or compensation to the owners of the stock itself—which represents the property—after paying all the operating expenses. And the showing was, in some cases, that there were no charges made, in the keeping of the accounts,
155 under the head of or for or on account of depreciation in the road or rolling stock—the property of the company. It is evident that there ought to be a proper account under that head; that a railroad, like everything else, will wear out in time; and they have been used so long in this country that there can be a reasonable estimate of the percentage of loss each year from depreciation of the roadbed, culverts, bridges, rolling stock; and that it would be proper to lay aside a reasonable amount to furnish replacements, renewals and repairs when needed, and that if that was not done the railroad company might soon be in a position in which it could not keep up, with the receipts that it was getting, and maintain its property in an efficient state to render such service as the public is entitled to receive from it. Now this is a matter in which the public has an interest, as well as the railroad companies and the stockholders of the railroad companies. Some of us older men can remember, in the early days, about the time when the state was admitted, the great anxiety that the people of the state had at that time that railroads should be brought into the state; that persons having capital should be induced to bring railroads into the state; that it was necessary for the prosperity and the upbuilding of the state that it should have railroad connections with the rest of the world; and that great and successful efforts were made to get large subsidies, in the way of land grants, from congress; and that almost every community in the state, every village that had hopes of getting a railroad to it, counties, and all the municipalities were ready to vote, and did vote, bonds as subsidies, for the purpose of inducing men with capital to come into the state and build railroads. They could foresee that it was necessary for the advancement and prosperity of the state, to bring emi-
156 grants and others into the state, and change what at that time was a large waste into the sites of prosperous cities, thriving towns and villages and farms, and therefore to have railroads built giving them connection with the rest of the world; that there should be a way to take farm products, grain, cattle, hogs, everything that was produced by the farmer, in the quickest manner to the best market, and to bring into the state commodities that were needed by its people. And that was done. Railroads were built. We have them. We see the effect of the railroads. And I think every one will admit that no institutions that we have had in the state have done so much to bring about the present state of prosperity, upbuild cities and cover the state with prosperous farms and with a large population, as the railroads. And it would certainly be a very great calamity if these railroads were dealt with in such a way as to destroy their efficiency and usefulness to the inhabitants of the state. But notwithstanding this, there is, of course, a danger that the mass of the people, looking upon these large aggregations of wealth, seeing occasionally a person who is reputed to be or who has become wealthy on account of his connection with these rail-

roads, and that they are getting considerable amounts of money from the people of the state as compensation for the services that they are performing, will manifest a disposition to reduce this compensation; to save to the people a certain amount of what they have to pay when they patronize the railroads as passengers, or have commodities of any kind to ship upon the railroads. It is quite natural that they should want to have those charges reduced to the lowest point, at any rate, which would be consistent with keeping up the efficiency of the railroads and the advantages which they are receiving from them. There is a danger that this
157 feeling of selfishness may lead them too far, and reduce this compensation so much that it will not enable the railroads to serve them with efficiency—to keep up their roadbed, culverts, bridges and everything so that they will be entirely safe for the transportation of passengers and freight, and to keep the rolling stock in the best state of efficiency, and enable them to provide the best service attainable. And that is exactly what those corporations are required to do; they are required to exercise the highest degree of care in relation to the transportation of passengers, and a high degree of care in relation to the transportation of freight, and it is certainly for the interests of the people that they should be enabled to do this; and it would be a very short-sighted policy which would reduce the compensation of these railroads to a degree that would disable them from performing these services fully and fairly for the benefit of the people.

A question has been raised in the case that these rates fixed by the Railroad and Warehouse Commission and by the legislature trench upon the authority of congress under the commerce clause of the constitution, which gives to congress the entire control and regulation of commerce among the states and with foreign nations and the Indian tribes. There is no question made that this is an exclusive power and that no state has any right to trench upon it in the least, and the decisions of the supreme court have been quite frequently to the same effect. In the Eubank case, and in the case of the transportation from St. Louis to Texas (I do not remember the title), where the legislature provided that the shipper could not recover any greater amount than was stated upon the bill of lading, and where, after the bill of lading had been issued, the Interstate Commerce Commission, or some persons acting
158 through its authority, raised the rate, and the railroad company collected the rate, which was above the amount named in the bill of lading, the supreme court held that an act of that kind by the legislature was matter affecting interstate commerce and not within the power of the legislature to enact. There were several of those decisions referred to on this hearing.

It is claimed on the part of the complainants that these regulations of rates in this state, passenger and freight, do interfere with interstate commerce, and instances have been cited as to their effect upon transportation between, we will say, the Twin Cities, and points on the border line of North Dakota; a comparison between the rates which the state has fixed, which would govern as between these cities and Moorhead, and rates which would govern transporta-

tion across the river to Fargo. And it has certainly been very persuasively argued that these rates, fixed by the Minnesota legislature in relation to transportation in Minnesota alone, do of themselves necessarily interfere with interstate commerce, and, under the provisions of the Hepburn law, prohibiting discrimination in respect to localities similarly situated, it is claimed that if the railroad companies themselves, without authority of the state, should fix the present rates between these cities and Moorhead and the interstate rates now existing between these cities and Fargo (and the same with Grand Forks and other places) that they would be liable to prosecution for discrimination. And it would seem to be very difficult to avoid that conclusion, and the conclusion that these rates fixed in respect to Minnesota do necessarily and directly affect interstate commerce. But on the other hand, we have decisions of the Supreme Court, going back at least as far as the case of Munn vs. Illinois in the 94th U. S., and the Granger cases in the same
159 volume, and repeated by very many decisions since and up to the present time (the last one being what may perhaps be termed the dictum of Mr. Justice White in the case which was decided only on the 19th of April last), to the effect that the state has the right to fix rates in respect to local business within the state; that each state has that right. That has been, as I say, decided over and over again by the supreme court. And as it is a fact that if these rates fixed by the Minnesota legislature do interfere with interstate commerce, it is not simply the rates between here and Moorhead which interfere with it, but it would be as well the rates fixed to any point near the borders of the state; the rates in the state to Willmar, or Detroit, or Crookston, would, in the same way, to a lesser degree, interfere with the interstate rates that existed prior to that time between these cities and points in North Dakota. A holding that they did so interfere and for that reason are unconstitutional, if held at all, would apply, it would seem to me, to these rates entirely throughout the state. The state is bordered on all sides by other states, and I do not think it can be held that the rates simply to Moorhead might be unconstitutional and the rest of them constitutional. But in view of the decisions of the supreme court, to which I have referred, and which have been so continually adhered to down to the present time, it seems to me it would be very improper that I should attempt, on this preliminary hearing in this case, to make a holding entirely contrary to those holdings of the supreme court. I should hesitate very much before doing so. Although I do not think I ordinarily hesitate in any case to rule as I deem to be correct according to law, I certainly do pause before holding that these rates are not within the power of the legislature, if they are fairly compensatory.
160 I have no doubt that congress might very properly, under the constitutional provision giving it the entire power of control over interstate commerce, assume control of the avenues of interstate commerce—of the railroads which are engaged in interstate commerce, and of all rates which are collected by those railroads, whether within the states or without the states; because the matter

of those rates would affect these avenues of interstate commerce, might affect their ability to continue as avenues of interstate commerce. The rates if they were fixed by the states might be fixed so low in one state, and another, and all of them, that the railroads could not exist and could not perform their functions as carriers of interstate commerce; and for the purpose of securing these railroads as carriers of interstate commerce, congress would have the power under that provision, to take the entire control of the regulation and the rates which the carriers of interstate commerce, upon the avenues of interstate commerce, would have the right to charge, the same as congress has assumed the right, under the very same clause, to control the navigation of the coastwise waters, bays and lakes, and the rivers running through the country—even if the rivers are entirely within a particular state. They have as much control of the Mississippi River above the Falls of St. Anthony as they have between St. Louis and New Orleans; the same control of the Minnesota River, which is entirely within the state—both of which streams have been used for the purpose of navigation within my recollection. On the upper Mississippi, above the falls, there were two lines of steamboats, before the war, for some years; and upon the Minnesota River there were several lines of steamboats, running as far up as Fort Ridgeley, I think; and after congress assumed the control of navigation
161 entirely, it applied this control to those rivers just as much as to rivers that run between states and through several states, and applied it to the bays and inlets on the coasts of the ocean, where there was navigation running from one state to another. The same with the coasts upon the Great Lakes. I think there is no doubt but that matter would be within the control of congress. But, as has been held by the supreme court in many cases, where congress has the power to exercise control, as long as it fails to exercise it the states may exercise control in all matters that are proper—police regulations at any rate. And until congress does exercise that control, and certainly while the supreme court continues to hold, as it has, that the states may regulate the local commerce that is entirely within the state, I do not think it would be proper that I should attempt to hold that these acts are void as invasions of the right of congress to control exclusively the avenues of interstate commerce, although I must confess that the arguments to the effect that these particular acts of the Minnesota legislature do interfere, necessarily and directly, with interstate commerce, are extremely cogent.

Now, with respect to the order of the Railroad and Warehouse Commission which went into effect on the 15th of November last, and which was accepted by the railroad companies, and which they acted under from that time to the commencement of this action, and in respect to the passenger rates, which were fixed by the act of April 4th of the present year, and were accepted by the railroad companies, it is claimed that no preliminary injunction should issue having the effect to stop the operation of that order and that act, and that the office of a preliminary injunction is simply to keep matters in statu quo until the final decision of the case. That is, ordi-

narily, the effect of a preliminary injunction, and ordinarily
162 it ought not to be extended beyond that. It is true that there may be cases—for instance, where a trustee of property is attempting to put that property in the hands of a third person and to defraud the cestui que trust of the property or of its use or benefit, and where that is made clear, and where it has not gone fully into effect but has partly gone into effect and that is made clear, a preliminary injunction may be made so far mandatory as to require,—where the property has been partly taken away from the hands of a trustee, perhaps by his own fraudulent consent, and the cestui que trust is likely to be deprived of it—that even a preliminary injunction may be made mandatory so far as to require that that property be restored to the hands of the trustee or into such hands as the court may place it, to preserve it for the benefit of the cestui que trust. But that exercise of authority ought not to extend beyond cases where there is actual fraud; where the person receiving the property has no fair claim of right, no fair color of right to the property. If he can show that he has a fair color of right which may be litigated, he ought not to be deprived of an opportunity to preserve the status quo until the matter should be properly determined. Now, in this case, in respect to the rates fixed by the Railroad and Warehouse Commission, it is claimed on behalf of the state—and claimed, no doubt, honestly—that these rates are not confiscatory; that they do afford an adequate compensation for the services rendered, in view of the property which is used in the business, and that they are entirely valid; and the same way with the passenger rates. The state insists—and no doubt entirely in good faith—that these rates are compensatory; that
these acts are not confiscatory; that they are not in violation of
163 the constitutional provision in any manner. And it seems to me, under those circumstances, that the preliminary injunction cannot go against the enforcement of the rates fixed by the Commission, nor the passenger rates which have been accepted by the railroads and are in operation. I say this without any reference to the fact that the court would have no right to fix rates if it should be determined to enjoin either of these rates. And this will obviate the necessity, upon this hearing, of determining whether the rates fixed by the Commission, or the passenger rates, together or singly are confiscatory, and do not afford reasonable compensation for the services rendered and a proper allowance with respect to the property employed. These, I think, need not be considered.

But the act of April 18th, fixing the commodity rates, has not yet gone into effect. It has been restrained by the preliminary order of this court. And if it appears on this hearing that the rates fixed by that commodity act, in view of the lessening of the rates by the Railroad and Warehouse Commission and the lessening of the rates by the act of April 4th, are not sufficient to be compensatory, and are in fact confiscatory, the preliminary injunction ought to go against the putting of those rates into effect. As has been said, the showing in the case is that under the rates that were in effect prior to any of these mentioned going into effect, the amount of compensation received by the railroad companies for the services done within this state, in respect to transportation within the state, of property and persons, was

not compensatory; that in the case of the stronger roads, although it came very nearly being compensatory, in relation to the others they were far from compensatory. And it was virtually admitted that the
164 effect of the order made by the Railroad and Warehouse Commission was to reduce the amount of compensation which the railroad companies would receive upon the articles that were covered by that order, on merchandise within the state of Minnesota, some 20% to 25% (I think that appeared in the report made by the Railroad and Warehouse Commission to the legislature) and that the effect of the act of April 4th, with respect to passenger rates, cutting the rate from three cents to two cents per mile (which, upon the face of it, would be a cut of 33⅓%) was in fact, in view of all conditions, actually a cut of about 22% or 23% of the amount which was paid before for like services. It seems to me, upon this evidence of the conditions before either of those new rates were put into effect, and the reductions made by those rates, that if there is added the reduction which is attempted to be made by the commodity act, it will reduce the compensation received by the companies below what would be a fair compensation for the services performed, including an adequate return upon the property invested. And I think, on the whole, that a preliminary injunction should issue, in respect to the rates fixed by Chapter 232, talked of as the commodity rates, and that there should be no preliminary injunction as to the other rates, although the matter as to whether they are compensatory or not is a matter which may be determined in the final determination of the action.

An order will be entered overruling the demurrers in each case.

Endorsed: "Filed Sept. 23, 1907. Henry D. Lang, Clerk."

165 Circuit Court of the United States, District of Minnesota, Third Division.

(In Equity.)

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG, Defendants.

Separate Answer of E. T. Young.

The separate answer of the defendant Edward T. Young, to the bill of complaint of the complainant above named, respectfully shows:

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, says:—

I.

He admits the residence and citizenship of the complainant to be as alleged in the complaint. That the defendant, the Minneapolis and St. Louis Railroad Company is a corporation organized under the laws of the State of Minnesota. That this defendant, Edward T. Young, is a resident and citizen of the State of Minnesota and is the Attorney General of said State. That the defendants Ira B.
166 Mills, Charles F. Staples and William E. Young are the members of and constitute the Railroad & Warehouse Commission of the State of Minnesota, and are residents and citizens of said State. He admits that the defendant Railroad Company is operating lines of railway as a common carrier of passengers and freight in and through the State of Minnesota and the other states named in the bill of complaint.

II.

This defendant admits that the lines of railway operated by the defendant Railroad Company are operated as one entire system and upon information and belief alleges that the stock and bonds of said Company outstanding represent said whole system; he admits that a large part of the business of said defendant Railroad Company is the transportation of interstate commerce, but this defendant denies that there is any necessary confusion or intermingling of the business transacted by said Railroad Company, which is wholly local to each of the States in which it operates, with that which is interstate commerce, and alleges that the amount and character of each, and the costs and productiveness of each, *and* entirely capable of being segregated and ascertained, and that the same have been so segregated and ascertained as a matter of common practice amongst railroads for many years past.

III.

He believes and alleges that a portion of defendant Railroad Company's lines have been judiciously located, but defendant has been informed and believes that certain of said lines have not been, and therefore he alleges that a large part of said defendant's said lines have not been judiciously located.

IV.

He is informed and believes it to be true, that the par value of the stock and bonds outstanding on account of said defendant Rail-
road Company's said lines is greatly in excess of the actual
167 original cost of constructing and equipping the same, and much greater than the cost of reproducing the said lines and equipment would be, and much greater than the present value of the same, and that the original cost per mile of constructing and equipping that portion of said Company's lines within the State of Minnesota, is much less than the cost per mile as to the part of said lines which are without the state of Minnesota.

V.

Further answering this defendant avers that prior to the 6th day of September, 1906, defendants Ira B. Mills, Charles F. Staples and William [illegible]. Young, acting as the Railroad & Warehouse Commission, in their official capacity as aforesaid, made an exhaustive investigation of the so-called merchandise rates charged by the defendant, the Minneapolis and St. Louis Railroad Company, and other railroads in the State of Minnesota, for the transportation between points in Minnesota, of the merchandise of the kind, quality and class described in Exhibit A, attached to the complainant's bill of complaint. Pursuant to the statute in such case made and provided, they conducted hearings in the course of said investigation, due notice of the same having been given to the railway companies intrested. That the defendant Railroad Company duly appeared, answered and took part in said proceeding, and the Railroad & Warehouse Commission of the State of Minnesota then and there had full jurisdiction and authority, both of the subject matter of said investigation and of said defendant Railroad Company, for the purpose of conducting said hearing, receiving and considering the evidence adduced thereat, and fixing reasonable, just and equal rates for the transportation between stations in the State of Minnesota by common carriers of merchandise of the kind and class described in Exhibit A; and these defendants as members of and constituting said Commission, duly heard and gave due consideration to the voluminous and comprehensive evi-
168 dence, much of which was submitted by and on behalf of said defendant Railroad Company, and as a result of said investigation and their considerations of the evidence adduced therein, defendants constituting the Railroad & Warehouse Commission as aforesaid, on the 6th day of September, 1906, made the Order referred to and complained of in said bill of complaint, and in and by said Order fixed the Schedule of rates in said bill of complaint referred to and complained of, and set forth in and by said Exhibit A, which said Exhibit A is hereby admitted to be a true and correct copy of the Order made on said day, and schedule referred to in said Order of September 6th, 1906.

VI.

That said defendants, in pursuance of their official duties in the premises, made said Order by reason of the fact that by the evidence adduced at said hearings, and by other competent and sufficient information, they were informed and convinced, and this defendant now believes and alleges, that the rates theretofore charged by said defendant Railroad Company for the transportation of said commodities between stations in Minnesota, were, on said September 6th, 1906, and theretofore, unequal, unjust, unreasonable and excessive, exacting from the public an unreasonably large sum for the services rendered and yielding to said Railroad Company an unreasonably high return, in that said rates, together with said defendant Company's other receipts from traffic local to Minnesota, produced a sum considerably more than sufficient to pay the cost of handling said traffic, together with a fair return on the value of the property devoted to the same.

VII.

That said defendants, acting solely as the Railroad & Warehouse Commission of the State of Minnesota, were further induced to make the said Order by reason of the fact that after considering the evidence adduced at the said hearings, and other competent
169 and sufficient information, they were informed and convinced, and now allege believing it to be true, that the rates so fixed by them in their said Order of September 6th 1906, and the accompanying schedule, upon the merchandise and articles therein named, for the transportation of the same between points in the State of Minnesota, were then, and are now, in every respect, equal, just and reasonable as to the said defendant Railroad Company and the complainant herein as a stockholder of said defendant Railroad Compny, and of the other stockholders of said Company; and this defendant now avers that the said rates yield to said defendant Railroad Company a fair return upon the present value of its property, including both its lines and equipment used by it in said traffic between points in the State of Minnesota, as such value is, or may be ascertained, having due regard for the original cost of construction of said lines and other property, the amount expended in permanent improvements thereof, the amount and market value of said Company's stocks and bonds, and the present as compared with the original cost of construction, the probable earning capacity of the property under said rates, and the sum required to meet the necessary and lawful operating expenses of said Company, together with all other elements affecting the value of said property, which are proper to be considered.

VIII.

Further answering this defendant respectfully avers and submits, that the Order of September 6th, 1906, and the said Act of April 18th, 1907, relate to and affect the carriage of freight exclusively within the State of Minnesota and between points therein, and that they do not purport to, nor do they in any manner, affect or burden interstate commerce, and this defendant denies that the existence or maintenance of the rates provided in said Order and Act can
170 in any manner affect, change or lower any other rate or rates maintained by said defendant Railroad Company, which are just and reasonable; nor can the same constitute discrimination as to any other rate, if such rate is just and reasonable in itself; nor effect, nor constitute discrimination as to any interstate rate maintained by defendant Railroad Company whether the latter is reasonable or otherwise.

IX.

This defendant admits that if the said Order of September 6th, 1906, did not permit rates, or if either of the Acts of the Legislature set forth and complained of in said bill of complaint, did not in and of itself permit rates which would yield to defendant Railroad Company, a return sufficient to pay the cost of the service required in transacting the business to which said rates are applicable, together

with a fair return upon the value of the property devoted by said Company to said traffic, and the convenience and use of the public therein, the result of enforcing any such order or law and thereby compelling the defendant Railroad Company to accept insufficient compensation for the service rendered, would be, as complainant alleges, a confiscation of its property, a taking thereof without due process of law, and a denial as to said Company and its stockholders of the equal protection of the law, and violative of the Constitution of the United States and especially the Fourteenth Amendment thereof.

Further answering, this defendant alleges, that the rates provided in and by said Order of September 6th, 1906, are equal and just, and are more than adequate for the service performed; and that, after ample and full consideration of said rates by the defendant Railroad Company, its officers, agents and directors, and as this defendant believes, by the complainant, the said rates were duly accepted, adopted and promulgated by said defendant Railroad Company and went into full force and effect on or about the 15th day of November, 1906, and have ever since been maintained and used by said
171 Company as its regular and duly published rates for the transportation of the merchandise described in Exhibit A, between stations in the State of Minnesota, and no objection or protest was made against the same by the defendant Railroad Company, this complainant, or any other person, until the passage of the Acts of the Legislature mentioned in said bill of complaint and hereinafter referred to.

X.

That no application for permission to change or raise said rates has been made to the Railroad & Warehouse Commission of the State of Minnesota by the defendant Railroad Company, or the complainant, or any other persons, since the same went into effect on November 15th, 1906.

XI.

This defendant further avers that, as provided by the statutes of the State of Minnesota, the defendant Railroad Company had the right to appeal to the District Court of the State of Minnesota from the Order of the Commission so entered on September 6th, 1906, within thirty days after the making thereof; that said District Court is a court of record and general jurisdiction, duly organized and existing under the Constitution and Laws of the State of Minnesota, and having and exercising all the powers of a court of chancery and a court of common law, as the same are known and recognized under our system of jurisprudence; and said Court is fully authorized and empowered to entertain and consider actions and defenses, both legal and equitable. That had such appeal been taken, the equality, justness and reasonableness of the rates heretofore maintained by said defendant Company, as well as those fixed by the Order of the Commission in said Order of September 6th, 1906, would have been for trial before said court de novo, and upon such trial the order and findings of said Commission would have

been only prima facie correct; that in said proceeding and upon said appeal, all of the rights of said complainant would have
172 been protected and every objection to the Order of said Commission, and every consideration which might be urged in opposition thereto, which may, can or might be urged in this action, could and would have been considered by said District Court on said appeal. That as this defendant is informed and believes, no demand was ever made by said complainant, upon said defendant Railroad Company, its officers, agents or directors, to appeal from the Order of said Commission made and entered on September 6th, 1906, or to take any step in relation thereto, to test the validity thereof, as provided by the laws of the State of Minnesota in that behalf enacted.

XII.

This answering defendant alleges that if the defendant Railway Company had not itself adopted and published the order of said Commission hereinbefore referred to, nor filed with said Commission its schedule of the rates and charges required by said order of said Commission, the defendants Ira B. Mills, Charles F. Staples and William E. Young, as said Commission, would have proceeded, upon the expiration of said time for appeal, to enforce said order, as provided by the statutes of the State of Minnesota, by proceeding in mandamus in the said District Court, and in that behalf would have requested the assistance of the Attorney General. That as this defendant is advised, the proceeding above described, is the only proceeding which this defendant could take for the purpose of enforcing the order of the Commission, hereinbefore referred to, and that until the rendition of final judgment in said proceedings by mandamus, the defendant Railway Company, its officers, servants and agents are subject to no fine or penalty through, by or on account of said order whatever; nor is said company in any manner subject to harassing litigation of any kind or to a multiplicity of suits by reason thereof.

173 XIII.

That in the proceeding by mandamus hereinbefore described, the Order of the Commission would only be prima facie correct, and the defendant Railroad Company would have full and adequate means and opportunity to defend against the same, and to urge in such defense every consideration of law and equity, and every fact which the complainant might or could present to this Honorable Court on the trial of this action upon its merits. That this defendant is, as he is advised, confined to said proceedings by the statutes of the State of Minnesota, and that any other person attempting to bring an action to compel the defendant Railroad Company to comply with said Order, is confined to a like proceeding, and that it is not true that unless this Court entertains this action and enjoins this defendant as prayed in the bill of complaint herein, that the complainant or said defendant Railroad Company will be compelled to defend their rights in a multitude of actions and proceedings, or that he or it will be in any manner deprived of any defense, or even

hampered in maintaining each and every defense which it may have to the Order of the Commission entered September 6th, 1906, hereinbefore specified.

XIV.

Further answering this defendant admits that on or about the 4th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled—"An Act prescribing the maximum rate to be charged for the transportation of passengers upon railroads within the State of Minnesota, providing for the enforcement of the same and penalties for the violation thereof," and that a copy of said Act is attached to said bill of complaint marked Exhibit B; and this defendant further admits that on or about the 18th day of April, 1907, there was approved an Act of the Legislature of the State of Minnesota, entitled "An Act relating to railroad freight rates in the State of Minnesota, and defining certain duties of the Railroad & Warehouse Commission," a copy of
174 which is attached to said bill of complaint marked Exhibit C.

XV.

This defendant alleges, that under and pursuant to the Constitution and Laws of the State of Minnesota, the Attorney General of said State has the right in the exercise of his official discretion, to institute and prosecute in the District Court of said State, in case the said defendant Railway Company refuses or neglects to comply with the provisions of said acts of the legislature, or either of them, and to put into force and effect the schedule of rates and charges provided for in said acts, mandamus proceedings in the name of the State of Minnesota and on the relation of this defendant as Attorney General and not otherwise, to compel the said defendant Railway Company to obey said laws and to put into force and effect the schedule of rates and charges therein prescribed. That in said mandamus proceedings the schedule of rates prescribed in said acts respectively would be deemed and considered only prima facie reasonable and proper charges and the defendant Railway Company would have full and adequate means and opportunity in such mandamus proceedings to defend against the enforcement of the rates and charges prescribed in and by said acts respectively, and to urge in said defense every consideration of law and equity, and every fact which the complainant might or could present to this Honorable Court on the trial of this action upon its merits. That this defendant is, as he is advised, confined to said proceedings by the statutes of the State of Minnesota, and that it is not true that unless this Court entertains this action and enjoins the defendants, as praved in the bill of complaint herein, that said Railway Company will be compelled to defend its rights in a multitude of actions and proceedings, or that it will be in any manner deprived of any defense, or even hampered in maintaining each and every defense which it may have to the enforcement of the said acts of the legislature hereinbefore referred to.

175 This answering defendant denies that he has ever contemplated or intended or threatened to bring any action or prose-

cution, or take any steps whatever, looking to the enforcement of the provisions of said acts of the legislature, other than said proceeding by mandamus. Defendant further alleges that no application has even been made to the defendants Ira B. Mills, Charles F. Staples and William E. Young, acting as the Railroad & Warehouse Commissioners, or either of them, by the complainant herein or by the defendant Railway Company, its officers or agents, requesting the exercise by them of their right to modify or change any of the rates or charges provided for by said acts of the legislature.

XVI.

Further answering this defendant avers that for many years last past the rates charged by the defendant Railroad Company for the transportation of passengers within the State of Minnesota, have been unequal, unjust and exorbitant, and that the rates and charges fixed and specified in said Act of the Legislature of April 4th, 1907, for the transportation of passengers within the State of Minnesota, are equal, just and reasonable, and if enforced the same will afford to the defendant Railroad Company and its stockholders, an ample revenue to pay the necessary cost and expense of conducting said business, together with the proportion of the fixed charges of said defendant Railroad Company properly chargeable to said passenger service, and such proper proportion of all of the other legitimate and proper expense of said defendant Railroad Company chargeable thereto, and to yield to said Company and its stockholders, a fair and adequate return upon the value of the property invested in said business. And this defendant respectfully avers that the said Act of April 4th, 1907, relates to and affects the transportation of passengers exclusively within the State of Minnesota and between points therein, and that it does not purport to,
176 nor does it in any manner, affect or burden interstate commerce, and this defendant denies that the existence or maintenance of the rates provided in said Act can in any manner affect, change or lower any other rate or rates maintained by said defendant Railroad Company, which is, or are, just and reasonable; nor can the same constitute discrimination as to any other rate or rates, if such other rate or rates is or are, just and reasonable in itself; nor affect, nor constitute discrimination as to any interstate rate maintained by the defendant Railroad Company, whether the latter is reasonable or otherwise.

XVII.

That prior to the 18th day of April, 1907, the rates and charges made by the defendant Railroad Company for the transportation between stations within the State of Minnesota, of the commodities named in the said Act of April 18th, 1907, were unjust, unequal and extortionate, and were much higher proportionately than the charges made by said Railroad Company for the transportation of other freight upon its lines within the State of Minnesota and elsewhere; That the rates and charges fixed and provided by said Act of the Legislature of April 18th, 1907, are just, equal and reasonable as applied to said defendant Railroad Company and its stockholders,

and in truth and in fact are proportionately still higher than the rates and charges fixed by said Railroad Company for like services in the transportation of other freight in the State of Minnesota and elsewhere, and that the rates and charges so fixed by said Act of the Legislature are sufficient to give to said defendant Railroad Company and its stockholders, a revenue proportionately sufficient with its other revenues, to permit it to meet its operating expenses, fixed charges and all other proper and necessary expenses in connection with the operation of said Railroad Company, and in addition thereto, a fair and adequate return upon the value of the
177 property invested in the business of said Railroad Company.

XVIII.

Further answering this defendant avers upon information and belief, that no sufficient demand was ever made by the complainants upon the defendant Railroad Company, its officers or directors, requesting the institution of any legal proceedings in the name of the defendant Company, to test the reasonableness or validity of either the Order of the Railroad & Warehouse Commission or the Acts of the Legislature mentioned in said bill of complaint, and avers upon information and belief, that this suit is wholly collusive, and is brought, not for the purpose of ascertaining in a speedy and orderly manner the sufficiency of the rates and charges specified in said Order and Laws, but for the purpose of hindering, delaying and obstructing the public officers of the State of Minnesota, charged with duties in connection therewith, in the performance of such duties.

XIX.

Defendant on information and belief, denies that the expense of performing the service of transportation of local traffic between stations in the State of Minnesota is as great as the cost of handling and transporting such traffic in several other states through which said defendant's lines of railway run. Defendant further denies that the rates for intra-state business per mile of haul should be, or are, in all cases greater than the rates per mile upon interstate business, and alleges that if such comparison is to be made in any case resort must be had to all the facts and circumstances surrounding the traffic in question.

Defendant admits that the defendant Railroad Company's operating and other expenses have increased to some extent during the last few years; but on information and belief denies that the said expenses have increased to the extent therein alleged. Defendant admits that during the eighteen months, or thereabouts, next
178 preceding the commencement of this suit, the cost of material used in the construction, renewal and repair of railroads has increased, but defendant denies that the percentage of increase is as great as is alleged in complainant's bill of complaint, and on the contrary alleges that the percentage of increase in the cost thereof is much less than is in said bill of complaint alleged. Defendant specifically denies that the gross earnings taxes paid by the defendant Company to the State of Minnesota for the year 1906

were thirty-three per cent greater than were the taxes paid by it for the year 1905, but allege on the contrary that the taxes paid by said defendant Company for the year 1905 were greater and amounted to more than the taxes for the year 1906. Defendant on information and belief, denies that the expenses of economically operating the defendant Company's railroad, together with taxes, consume sixty-two per cent of its gross earnings, but alleges that the percentage of the gross earnings which will be so consumed if said railroad is economically operated and managed will be much less than sixty-two per cent, and defendant prays that complainant be required to make proof thereof.

Defendant avers that the defendant Railroad Company's operating and other expenses, both as to traffic local to the State of Minnesota, and its interstate traffic and traffic in other states, for many years, have been and now are, largely and unlawfully increased by unjustifiable and unauthorized expenditures of the funds of said Company for purposes not authorized by law or the charter of defendant Railroad Company, the exact amount or precise nature of such unauthorized expenditures being now unknown to the defendant. Defendant alleges that if defendant Railroad Company's said lines within the state of Minnesota, as well as all other lines owned and operated by it, had been economically conducted and operated,

179 the same would, so far as the same were judiciously located and built in response to a public necessity and demand therefor, have paid and returned to the defendant Railroad Company a fair return on the value thereof, after deducting the expense of operating the same including such proportion of the fixed charges and expense of said Railroad Company properly chargeable thereto, and taking into consideration all other elements proper to be considered therewith.

Defendant further alleges that in truth and in fact such Railroad Company has earned sufficient sums to pay all of its necessary operating and other expenses and a large return on the capital actually invested therein, and that if the said Order of September 6th, 1906, and the said Acts described in and complained of in the bill of complaint are enforced, said Railroad Company will still, by a proper and fair adjustment of its rates and charges, be enabled in the future to meet its necessary operating and other expenses and expenditures, and in addition thereto, pay to its stockholders a fair return on the value of the said road and its equipment.

Defendant alleges that he has no knowledge or information sufficient to form a belief as to whether the gross earnings of the defendant Company, its operating expenses, taxes and interest on its funded debt and rentals for the fiscal year ending June 30th, 1906, and the net earnings derived therefrom, were of the amounts respectively alleged in Paragraph XVII of complainant's bill of complaint, and this defendant prays that complainant be required to make proof thereof if the same is necessary or material.

XX.

Further answering this defendant avers that the defendant Company's lines of railroad in the State of Minnesota are situated in a thriving and rapidly growing section of the State, and the volume of traffic upon said railway, particularly its passenger traffic, and in the commodities referred to in the Order of said Commission of September 6th, 1906, and the Act of the Legislature of April
180 18th, 1907, will be necessarily greatly increased in the near future; that said freight commodities are of a class and character which enables them to be transported at a very slight cost, as compared with other classes of freight, but notwithstanding that, this defendant charges the fact to be that under the tariffs and charges heretofore maintained by the defendant Company, the freights named in said Order and said Acts of the Legislature were compelled to yield an unequal and unfair proportion of the entire earnings of said Company from the operation of its lines of road local to the State of Minnesota. This defendant denies that the application of the schedule rates prescribed by the order of September 6th, 1906, and the Act of April 4th, 1907 and April 18th, 1907, to the defendant Railroad Company's merchandise, commodity and passenger traffic for the year ending June 30th, 1906, would have effected a reduction of the earnings of said Company to the amount set forth in complainant's bill; Defendant admits that the application thereof to such business would have effected a reduction therein, but alleges on information and belief that such reduction would have been much less than as is in said bill of complaint alleged, and this defendant prays that complainant be required to make proof thereof.

This defendant further alleges that the rates fixed and prescribed by the Order of April 6th, 1906, and the Act of April 18th, 1907, are entire rates for the services to which they respectively refer, and are not susceptible of being subdivided or any part thereof separately apportioned to any part of a particular haul, as is attempted to be done in complainant's bill of complaint herein; and in determining the fairness thereof any given rate should and of right ought to be considered as applying to the entire haul for which it is prescribed.

XXI.

Further answering this defendant denies that the jurisdic-
181 tion of this Court ought to have been, or can be invoked, in this cause, and he further denies that said complainant is entitled to the relief, or any part thereof that his said bill of complaint demanded. This answering defendant further alleges that the complainant in and by his bill herein seeks to restrain and enjoin the performance by this defendant, as Attorney General of the State of Minnesota, of his discretionary official duties and powers, and that the above entitled cause is in truth and in fact a suit against the State of Minnesota, instituted and maintained contrary to the provisions of the Constitution of the United States of America, especially the 11th Amendment thereto, and this defendant for such

reason doth now and always protest against the exercise by this Honorable Court of any jurisdiction over this defendant by reason of the facts and matters set forth and alleged in the said bill of complaint.

This defendant prays the same advantage of the aforesaid answer as if he had pleaded or demurred to the said bill of complaint, not admitting, however, that there is any matter or thing in said bill of complaint contained, material or necessary for this defendant to make answer unto and not herein or hereby well and satisfactorily answered, confessed, traversed and avoided, or denied, true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD T. YOUNG,
Defendant.

THOMAS D. O'BRIAN,
GEORGE T. SIMPSON,
C. S. JELLEY,
R. A. STONE,
Solicitors for Defendant.

Endorsement: Separate Answer of E. T. Young. Filed November 4th, 1907. Henry D. Lang, Clerk.

182 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

This repliant, William Shillaber, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendant above named, Edward T. Young, for replication thereunto says that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by his said bill he has already prayed.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Endorsement: Replication to Answer of Edward T. Young. Filed December 2, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

183 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

This repliant, William Shillaber, saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendants above named, Ira B. Mills, Charles F. Staples and William E. Young, for replication thereunto says that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Endorsement: Replication to Answer of Commissioners. Filed November 4th, 1907. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

184 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Take notice that the annexed motion for the appointment of a Special Master, and the order of the Court limiting the time for the taking of testimony herein, will be brought on for hearing before Honorable Walter H. Sanborn, Judge of said Court, at his chambers in the Federal Building, in the City of St. Paul, Minnesota, on Monday the 20th day of April, 1908, at eleven (11) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

HOW, BUTLER & MITCHEl L,
Solicitors for Complainant.

To Edward T. Young, Esq., Solicitor per se.
Messrs. O'Brien & Stone and George T. Simpson, Solicitors for Edward T. Young, Ira B. Mills, Charles F. Staples, and William E. Young.
Messrs. George W. Seevers and John I. Dille, Solicitors for Defendant Minneapolis and St. Louis Railroad Company.

185 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

Now come the above named complainants and move the Court that it appoint a Special Master in this case to take the testimony and to make and report to the Court his findings of fact on the issues raised by the pleadings herein, and to have such other powers and perform such other duties in the premises as the Court shall be advised; and at the same time that the Court will limit the time for the taking of testimony herein.

Dated St. Paul, Minnesota, April 20, 1908.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Endorsement: Notice and Motion for Appointment of Master, etc. File May 4th, 1908. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

186 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

This cause came on for hearing, on April 20, 1908, upon the motion of complainants that a Special Master be appointed and that a time for taking testimony herein be fixed. Mr. Jared How appeared for the complainants, Honorable Edward T. Young appeared for himself and Mr. Thomas D. O'Brien, Mr. Stiles W. Burr and Mr. William A. Lancaster for other parties interested herein, and after argument and consideration,

It is hereby ordered that Honorable Charles E. Otis of St. Paul, Minnesota, be, and he is hereby, appointed Special Master in Chancery in this case.

The Special Master hereby appointed is empowered and directed to take and report to the court the evidence in this cause.

The Special Master hereby appointed is empowered and directed to examine the evidence, to make the necessary computations, and to find and state the facts in this case, and to make a report to this court of the facts so found and of the results of such computations, and to recommend to the court in his report a form of a proper decree herein.

It is further ordered that upon the completion of his report of his findings of fact, the Special Master shall notify counsel
187 for the respective parties thereof and shall exhibit said report to them, or shall deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the Master within thirty (30) days after notice of its completion, and the Master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon and any modifications of or additions to his report he may deem it just and proper to make in view of such exceptions.

Upon the filing of such report and exceptions the cause shall stand for hearing before the court upon the said exceptions as though they had been made at the time specified in Rule #83 in Equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainant shall take his evidence in support of his bill is fixed at and limited to ninety (90) days from the date hereof, that the time within which the defendants shall take their evidence in defense herein is fixed at and limited to sixty (60) days thereafter, that the time within which the complainant shall take his evidence in rebuttal is fixed at and limited to thirty (30) days thereafter.

And it is further ordered that George N. Hillman be, and he is hereby appointed the stenographer and authorized to take and transcribe, under the direction of the Special Master, the testimony in this case.

WALTER H. SANBORN,
Circuit Judge.

St. Paul, Minnesota, May 4, A. D. 1908.

Endorsement: Order appointing Master and Stenographer, and limiting the time for taking of testimony. Filed May 4th, 1908. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

188 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

I, Chas. E. Otis, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to the

best of my ability, perform my duties as Special Master in Chancery in the above entitled cause, So Help Me God.

CHAS. E. OTIS.

Subscribed and sworn to before me this 12th day of May, A. D. 1908.

[SEAL.]

HENRY D. LANG,
Clerk of U. S. Circuit Court
for the District of Minnesota.

Endorsement: Oath of Special Master. Filed May 12th, 1908. Henry D. Lang, Clerk.

189 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, William E. Young, Defendants.

The term of office of the above named defendant Edward T. Young, as Attorney General of the State of Minnesota, having expired, and George T. Simpson having been duly elected as such Attorney General of the State of Minnesota, and having qualified and being now acting as such; and

The term of office of the above named defendant William E. Young, as a member of the Railroad and Warehouse Commission of the State of Minnesota, having expired, and Charles E. Elmquist having been duly elected as a member of the Railroad and Warehouse Commission of the State of Minnesota, and having qualified and being now acting as such;

It is stipulated that the said George T. Simpson and Charles E. Elmquist may be substituted as parties defendant in this suit in place and stead of said Edward T. Young and William E. Young respectively.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

E. T. YOUNG,
GEORGE T. SIMPSON,
O'BRIEN & STONE,
Solicitors for Defendants Edward T. Young, Ira B. Mills, Charles F. Staples, William E. Young.

____ ____,
Solicitors for Defendant Railroad Company.

190 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. Young, Ira B. Mills, Charles F. Staples, and William E. Young, Defendants.

It appearing to the Court from the stipulation of the parties that,

The term of office of the above named defendant Edward T. Young, as Attorney General of the State of Minnesota, has expired, and George T. Simpson has been duly elected as such Attorney General of the State of Minnesota, and has qualified and is now acting as such; and

That the term of office of the above named defendant William E. Young, as a member of the Railroad and Warehouse Commission of the State of Minnesota has expired, and Charles E. Elmquist has been duly elected as a member of the Railroad and Warehouse Commission of the State of Minnesota, and has qualified and is now acting as such;

It is ordered that the said George T. Simpson be and he is hereby substituted as party defendant in this suit in place and stead of Edward T. Young, and that Charles E. Elmquist be substituted as party defendant in this suit in place and stead of William E. Young, and that all orders and proceedings made, entered or had in this suit shall apply to and bind said substituted defendants and each of them in the same manner and with the same force and effect as if said substituted defendants and each of them had been parties defendant in this suit from the time of the institution thereof.

Dated St. Paul, Minn., Nov. 24, 1909.

WALTER H. SANBORN, *Judge*.

Endorsement: Stipulation & Order substituting parties defendant. Filed January 11th, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

191 Circuit Court of the United States, District of Minnesota, Third Division.

GEORGE SHILLABER
vs.
THE MINNEAPOLIS & ST. LOUIS RD. CO. et al.

Appearance.

The Clerk will enter my appearance for the defendants George T. Simpson and Charles E. Elmquist, substituted as defendants in the above entitled suit in place of Edward T. Young and Wm. E. Young.

GEORGE T. SIMPSON.
EDWARD T. YOUNG.
C. LOUIS WEEKS.

Endorsement: Appearance of Geo. T. Simpson, et al., as Solicitors for certain defendants. Filed Feb. 15, 1910. Henry D. Lang, Clerk.

192 United States Circuit Court, District of Minnesota, Third Division.

Chancery Rule and Order Book.

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862. Equity.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUISE RAILWAY CO. et al.

And now come the defendants George T. Simpson and Charles E. Elmquist substituted as defendants in place of Edward T. Young and William E. Young by George T. Simpson, Edward T. Young and C. Louis Weeks Solicitor- on whose motion it is ordered that the appearance of said substituted defendants be, and the same is hereby entered.

193 United States Circuit Court, District of Minnesota, Third Division.

No. 857. Equity.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

No. 858. Equity.

JOHN S. KENNEDY and HENRY F. DIMOCKS
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

No. 862. Equity.

WILLIAM SHILLABER
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

Whereas the State of Minnesota has made no adequate appropriation to pay the costs of printing, the cost of paying the reporter and the compensation of the special master in these cases, and it is necessary that these costs be paid to the end that the cases may be speedily prepared for hearing, we request the complainants to pay these costs and to leave the matter of the taxation thereof to be determined by the court after the final hearing of the cases.

GEORGE T. SIMPSON,
E. T. YOUNG,
Attorneys for Defendants.

Pursuant to the request of the attorneys for the defendants
194 and in the presence of the attorney for the complainants, who has heard the discussion and seen the request,

It is hereby ordered that the complainants pay all expenses referred to in the request and that the ultimate determination of those who shall pay these expenses abide the decision of the court after the final hearing of the cases in the Circuit Court.

WALTER H. SANBORN,
U. S. Circuit Judge.

St. Paul, Minn., May 11, 1910.

Endorsement: Request and Order in re Costs. Filed May 18th, 1910. Henry D. Lang, Clerk.

Here follows printed copies of three volumes of Testimony printed and furnished by the litigants and used on the hearing before the Court, also printed copies of complainants' and Defendants' Exhibits in two separate volumes, certified separate from this return.

195 Copy.

Circuit Court of the United States, District of Minnesota, Third Division. (In Equity.)

No. 857. Equity.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

and

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Master's Report to the Court.

(Endorsed:) Filed Oct. 29, 1910. Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

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195½ United States Circuit Court, District of Minnesota, Third Division. (In Equity.)

DAVID C. SHEPARD, Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, Defendants.

(Consolidated.)

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Master's Report to the Court.

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200 To the Honorable, the Judges of the Circuit Court of the United States for the District of Minnesota, Third Division, sitting in equity:

Now comes Charles E. Otis, by an order of Hon. Walter H. Sanborn, one of the Judges of said Court, made and filed with the Clerk thereof, in each of the above entitled suits, on the 4th day of May, A. D., 1908, appointed Special Master in Chancery, in said suits, respectively with power and direction to take and report to the Court the evidence therein, to examine such evidence, make all necessary computations, find and state the facts so found and the results of such computations, and recommend to the Court a form of a proper decree in each of said several suits, and respectfully reports:

I.

Introductory.

Having first taken and filed with the Clerk of Court his oath of office in each of said suits, the Master summoned the respective parties before him on the 20th day of May, 1908, for the consideration of the matters to him referred and at the time so appointed it was arranged that Complainants should commence their offer of testimony on the 2nd day of June 1908, and proceed with the same with all convenient speed.

By orders simultaneously made and filed and of like tenor and effect there were, in like manner, so referred to the Master nine several suits, consisting of the three above entitled and six others of the same general nature which at about the same time had been instituted by stockholders of railroad companies doing business in Minnesota as complainants against the respective companies of which the respective complainants were stockholders, the Attorney

201 General of the state of Minnesota and the members of the Railroad & Warehouse Commission of Minnesota as defendants, in all of which the solicitors and counsel were substantially the same. The grievances complained of were of the same general nature and all sought the same relief. Because the issues were identical or closly related, the determination of which would have, as to many of them, a like result in each case, it was arranged that the evidence submitted in any one of the cases in which testimony should be offered should, so far as applicable, material and relevant to the issues in any of the other cases, be received and considered as evidence in each of the cases. For the same reason, and because the several suits have been tried and submitted together, it has seemed to the Master

that he should make and file in each suit in which evidence was offered a report identical in form but so broad as to cover all the matters relative and pertinent to each thereof and that thus the Court would be materially assisted in reaching its determination in several causes.

For convenience, the suit against the Northern Pacific Railway Company and others will be referred to as the Northern Pacific case, the suit against the Great Northern Railway Company and others will be referred to as the Great Northern case and the suit against the Minneapolis & St. Louis Railroad Co. and others as the Minneapolis & St. Louis case.

According to arrangements so made, the taking of testimony was begun and diligently proceeded with, Mr. George N. Hillman, appointed by the Court for the purpose as reporter, taking down the evidence, in the presence of the Master, and transcribing the same, as directed by order of reference, thus making and preserving a full record of the testimony and of all matters and proceedings from time to time had and taken before the Master, all of which, properly certified by the reporter as being full, true and correct, is
202 herewith presented to the Court and filed with the Clerk thereof, to be preserved as a record in each of the suits.

It soon became manifest that it would be impossible to take the evidence within the time limited in said orders by the Court, much of it being statistical and historical in character, covering a long period of years and consisting of many and voluminous tables of figures contained in exhibits requiring careful preparation and the examination of many books of account and records for their proper presentation as testimony in court and for purposes of cross-examination. It was, therefore, eventually arranged that of the nine cases so referred to the Master evidence in three thereof should first be taken and considered by the Master and reported to the Court, and to this end the suits above entitled were selected and it was mutually agreed that the other six suits so referred should rest in abeyance until those selected should have been duly reported to the Court and by it finally determined.

It was further arranged that the taking of evidence in these three cases should be proceeded with as diligently as practicable, alternating as should be most convenient and best facilitate the progress thereof, and without following any fixed order of proof, either on the part of the complainants or defendants, and that the limit as to time for taking testimony fixed by the orders of Court should be considered as removed without making application to the Court therefor, save that the same should be proceeded with diligently and without unnecessary delay.

The taking of testimony in the three above selected cases was not finally closed until May 26, 1910, and final submission to the Master was made on the 29th day of July, 1910.

In the Northern Pacific suit the Complainant Charles E. Perkins has died and by order of Court the suit has been continued in the name of David C. Shepard, the surviving complainant, and
203 by him an amended and supplemental bill of complaint was filed.

The suit of Henry A. James against the Great Northern Railway Company and others has been consolidated with the suit of John S. Kennedy and Henry F. Dimock against the same defendants, and by these complainants an amended bill of complaint has been filed. Said John S. Kennedy has died, his death has been suggested to the Court and the executors of his will have been substituted as parties complainant in his place.

The terms of office of defendant Edward T. Young as Attorney General and of defendant William E. Young as a member of the Railroad & Warehouse Commission having expired, an order has been duly entered by the Court substituting in each of the three cases as parties defendant George T. Simpson, who has been elected Attorney General of the State of Minnesota to succeed said Edward T. Young and Charles E. Elmquist, who has been elected a member of the Railroad & Warehouse Commission of the state of Minnesota to succeed said William E. Young.

The Attorney General and the members of the State Railroad & Warehouse Commission have filed answers to the bills and supplemental bills in all of the above entitled causes. No answer has been interposed by the defendant railroad companies.

The defendants other than the railroad companies, the Attorney General and the members of the Railroad & Warehouse Commission, in the Northern Pacific and Great Northern cases are all citizens of Minnesota and engaged in the business of receiving and shipping freight over the lines of the defendant railroad companies in said state and make use thereof for passenger transportation, and are made defendants as representatives of and to protect the rights of a large class of shippers and passengers, so numerous that it was impracticable to make all of them parties defendant. No answers have been interposed by them or on their behalf save that their rights are fully protected by the answering defendants.

204 II.

Legislation and Matters Directly Pertaining Thereto.

By Chapter 28 of the Revised Laws of Minnesota 1905, being legislation originally enacted in 1887 as amended in 1901, the general supervision of railroad and express companies doing business in the state of Minnesota as common carriers, and all public warehouses, is vested in a board of three members known as Railroad & Warehouse Commission, with power to adjust and fix rates and prescribe rules and regulations for the conduct of the business of such companies, and fines and penalties are by said act prescribed for failure to comply therewith. The here material sections of said act are as follows:

"1969. Complaint that rate is unreasonable—Duty of commission—Upon the verified complaint of any person or of any corporation, private or municipal, that any tariff of rates, fares or charges, or any part thereof, or of any classification is unequal or unreasonable, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation

they may require the attendance of witnesses and the production of books, papers and documents. If, upon the hearing, such tariff of rates, fares, or charges, or any part thereof, or of such classification, is found to be unequal or unreasonable, the commission shall make an order stating wherein the same are so unequal or unreasonable, and shall make a tariff of rates, fares, charges and classification which shall be substituted for the tariff so complained of. The tariff so made by the commission shall be deemed prima facie reasonable in all courts and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same.

"1970. Investigation without complaint—The commission shall also of its own motion investigate any matter relating to the
205 management by any such carrier or warehouseman of its business or the reasonableness of any rates, fares, charges, or classifications, whenever, in its judgment, the public interests require it, and in such case the procedure shall be, as nearly as may be, as provided upon the filing of a complaint, and the findings and order in such case shall have the same effect as those made upon complaint."

During the 1905 legislative session of Minnesota, a joint resolution of the House and Senate was passed, approved April 14, 1905 (Session Laws of 1905, Chap. 350), directing the Railroad & Warehouse Commission "to undertake the work of securing a readjustment of the existing freight rates in this state which will give a more uniform system of rates throughout the state and a uniform scale of percentages which each class rate shall bear to the first class, the re-adjustment to secure a substantial reduction in the existing merchandise rates." At the same time funds were provided to enable the Commission to secure a physical valuation of all the railroad properties within the state.

At the same session of the legislature, by Chapter 176 of the laws of that year, railroad companies within the state were prohibited from changing any state rate except upon application to the Commission and its consent obtained. Theretofore it had been the practice of such carriers to increase or reduce their rates at will without previous notice and free from governmental control.

Prior to such legislation the Commission had been diligent in supervising and regulating the methods of business of such carriers with reference to the furnishing of cars, adjusting minimum carload weights, equalizing as far as practicable rates between localities and between shippers so as to prevent unjust discrimination between such localities and between individual shippers in the same
206 localities, securing reasonable rates and switching charges in particular cases, and supervising like matters arising between shippers and carriers, most of which were usually adjusted by mutual concessions and compromises without formal investigation or order.

With reference to the matter of rates complaints were almost invariably based on one of two claims, either that somebody in the same or in a nearby town was getting a better rate or that the rate to some particular town was unreasonably high as compared with the

rate to some other town on the same or some other line of road with reference to the relative mileage, and such complaints were usually confined to some particular commodity.

Alleged discrimination between localities and shippers, not excessive rates, was, with respect to tariffs, substantially the only ground of complaint.

Through the active interposition of the State Commission reductions and readjustments throughout the state on all railroads were secured in rates upon grain, coal, lumber and livestock in both state and interstate traffic. The Commission had not, however, undertaken to prescribe general schedules or tariffs covering all articles and commodities.

After the legislation of 1905, and pursuant thereto, the Commission made an extended investigation of the so-called merchandise rates charged by all railroad companies throughout the state doing business therein for the transportation of freight merchandise between points in Minnesota without, however, making a physical valuation of the properties employed in such service, and made up and completed full schedules of rates covering all merchandise transportations and notified such railroad companies to show cause why such schedule should not be promulgated as a maximum schedule of rates for all said railroads between points within the state.

Pursuant to such notice public hearings were had before the Commission, extending over a period of several months, in which
207 the railroad companies appeared and took an active part and submitted a large amount of testimony with reference to the matters under consideration, sufficient in the opinion of the Commission to enable it to act intelligently in the premises, and thereupon, on September 6, 1906, it made and served an order on all of said railroad companies, to take effect November 15, 1906, a true and correct copy whereof is annexed to and made a part of the bills of complaint in these cases.

Thereafter, on May 3, 1907, said Commission in like manner made and served on all the defendant railroad companies an order supplemental to said order of September 6, 1906, a copy of which is annexed to the bills of complaint herein and made part thereof, and was made for the purpose of securing more favorable in-rates to a number of jobbing centers other than the eastern terminals of St. Paul, Minneapolis and Duluth, and was so made pursuant to a provision of the order of September 6, 1906, in the form of a note thereto to the effect that such action would be taken if further satisfactory adjustments should not be made by the railroad companies.

The volume of business and increased facilities for handling the same at certain large and important stations called terminal or distributing stations substantially reduced the cost of transportation to and from such points and justifies preferential rates in favor of the patrons thereof—a condition recognized by the Commission's orders. Such rates are known as distributive or terminal rates and are the rates specifically named in the schedules of rates which form a part of said orders.

Rates upon shipments between points neither of which are terminal or distributive stations are known as distance tariff rates and are

the same as terminal rates for like distances with five per cent added.

By the Western Classification, so-called, and to which reference is made in said orders, substantially all commodities and property which are the subject of transportation are classified and ar-
208 ranged in groups with reference to their general character and value and the cost of transportation thereof, and such classification, with modifications from time to time made therein, has long been used by common carriers in the West and Northwest as a basis for fixing rates, the commodities of each class taking the same rate under like conditions. In Minnesota, however, a large number of commodities, amounting to several hundred, have, by the intervention of the Commission, been removed from such Western Classification and given special rates known as "commodity rates" or reduced in class so that the Western Classification in operation in Minnesota is very materially different in many respects from the Western Classification in general use as a basis of rates in other states.

The schedule of rates set forth in the order of September 6th was such that each rate for each class for any distance bore such an exact relation to each other rate that, given one rate out of the schedule, any other rate could be ascertained by mathematical calculation and without reference to the schedule itself. The plan of the schedule is this:

For first-class merchandise an allowance of 11.02 cents per cwt. is made for terminal charges and for each five miles or fraction thereof up to 200 miles, .98 of a cent for hauling charge; so that for a distance of five miles the rate is 12 cents per cwt., for a distance of ten miles the rate is 12.98 cents per cwt. and for a distance of 200 miles the rate is 50.22 cents per cwt. After a distance of 200 miles is reached .98 of a cent is allowed per cwt. as a hauling charge for each ten miles or fraction thereof up to 400 miles; so that the rate for 200 miles being 50.22 cents per cwt. the rate for 210 miles is 51.20 cents, for 220 miles the rate is 52.18 cents and for 400 miles the rate is 69.82 cents per cwt. After a distance of 400 miles is reached .98 of a cent is allowed as a hauling charge per cwt. for each 20 miles or fraction thereof up to 500 miles; so that the rate for 400 miles
209 being 69.82 cents per cwt. the rate for 420 miles is 70.80 cents and the rate for 500 miles is 74.72 cents per cwt.

The rates for classes other than the first class are a fixed per centum of the corresponding rates for the first class, those for the second class being 83⅓ per cent, of the third class being 66⅔ per cent, of the fourth class being 50 per cent, of the fifth class being 40 per cent, of Class A being 45 per cent, of Class B being 35 per cent, of Class C being 30 per cent, of Class D being 25 per cent and of Class E being 20 per cent.

The rates prescribed are maximum terminal rates and may be increased by five per centum for shipments between stations neither of which is a terminal or distributing station.

It appears from the evidence that the rates so prescribed for the first four classes apply alike to merchandise shipments in carload or in less than carload lots, but as to all the other classes they apply only to shipments in carload lots.

The reduction in merchandise rates made by the order of September 6, 1906, was from 20 per cent to 25 per cent, but notwithstanding the extent of the reduction all the railway companies interested put the rates prescribed by the order into effect on the 15th of November, 1906, and they ever since have been and still are maintained by all the companies concerned as maximum rates for the transportation within the state of merchandise covered by the order.

The same is also true with reference to the rates prescribed in the Commission's supplemental order of May 3, 1907, from and since its issuance, which supplemental order, in the Northern Pacific case, effected a reduction of 13.577 per cent in the rates upon the traffic affected by it. To what extent it affected traffic rates in the Great Northern case does not appear. In the Minneapolis & St. Louis case no relief is asked on account of it.

At the same time that the Commission was considering the schedule afterwards incorporated in its order of September 6, 1906, it was also considering a reduction in rates for transportation within
210 the state of commodities in carload lots not covered by the order. Because of the agitation with regard to commodity rates, the three northern systems in the state, the Great Northern, the Northern Pacific and the Minneapolis, St. Paul and Sault Ste. Marie companies, voluntarily reduced their rates on grain approximately ten per cent by filing schedules effective September 1, 1906, and their rates on hard and soft coal at least ten per cent by filing schedules effective October 22, 1906.

Notwithstanding these voluntary reductions and the reductions caused by the order of September 6, 1906, the Commission under date December 14, 1906, effective by its terms January 26, 1907, made its second order reducing rates for transportation within the state of grain, coal, lumber and livestock. The reduction effected averaged from 10 per cent to 28½ per cent or a general average of 17.37 per cent in addition to the voluntary reductions in rates on grain and coal made by the three northern systems as above recited.

In January, 1907, the railroad companies affected by this second order, being all that are parties defendant to the nine pending suits as above set forth, procured an injunction from the Circuit Court of the United States for the District of Minnesota forbidding the enforcement by the Commission of its second order. Thereupon the legislature of the state, which convened early in January, 1907, enacted Chapter 232, General Laws of Minnesota for the year 1907, approved April 18, 1907, and effective by its terms June 1, 1907, fixing a new schedule of commodity rates in all respects like the schedule comprehended in the second order of the Commission excepting that the reduction in rates provided by it was 10 per cent less than that provided by the order—a copy of which legislative enactment is annexed as an exhibit to the bills of complaint respectively.

By Chapter 232 the legislature creates seven new classes,
211 numbered respectively from 11 to 17. Wheat and thirteen other articles are placed in Class 11, corn and thirty-seven other articles in Class 12, lumber and five other articles in Class 13,

sheep in double-decked cars and cattle in Class 14, sheep in single-decked cars and hogs in Class 15, hard coal in Class 16, and soft coal in Class 17. There is no fixed percentage relation between the classes and no regular rate of progression of the various rates with increasing distance. In other respects, however, the method of making the schedules is similar to that adopted by the Commission in its order of September 6, 1906. The hauling charge comprehended in the rates for each class decreases with increasing distance and becomes very small for the added mileage for distances between 300 and 400 miles, which is the limit of distance covered by the Act. On Class 11 the difference between the rate for 300 miles and that for 400 miles is 1.1 cents per cwt. amounting to 2.2 mills per ton per mile; on Class 12 the difference is one cent per cwt. or two mills per ton per mile; on Class 13 it is 2.2 cents per cwt. or 4.4 mills per ton per mile; on Class 14 it is 2.2 cents per cwt. or 4.4 mills per ton per mile; on Class 15 it is 1.5 cents per cwt. or three mills per ton per mile; on Class 16 it is 34 cents per ton or 3.4 mills per ton per mile; and on Class 17 it is 18 cents per ton or 1.8 mills per ton per mile.

The schedule of rates only applies to shipments in carload lots with minimum weights definitely fixed by the Act.

Meantime and at the same session of the legislature it had passed the so-called two cents passenger law, being an Act approved April 4, 1907, effective by its terms May 1, 1907, prescribing as maximum rates for the transportation of passengers within the state two cents per mile for passengers of twelve years of age or over together with baggage not exceeding 150 pounds in weight, and one cent per mile for passengers under twelve years of age together with baggage not exceeding 75 pounds in weight. The maximum theretofore
212 had been three cents for adult passengers and 1½ cents for persons under twelve years of age.

The defendant railway companies published and put into effect the passenger rates prescribed by said Act on April 4, 1907, and were about to put into effect the commodity rates prescribed by said Act of April 18, 1907, and would have done so had they not been restrained by the writs of injunction issued in these suits. They were apparently influenced in what they did and were about to do both with respect to the Commission's orders and the Acts of the legislature by the severe penalties denounced by the statutes, which, until their invalidity in this respect was judicially determined, as has since occurred, they feared might impose upon the officers thereof heavy fines and long imprisonments.

If said railway companies had refused to obey the orders of the Commission and the acts of the legislature aforesaid, or ceased to obey the same or either thereof, said Attorney General and said Commission were intending to take, and would have instituted proceedings, by mandamus or otherwise, against them and each of them and their respective officers and agents, to enforce obedience to said acts and orders, and said proceedings would have been so taken but for the injunctional orders issued herein.

Before the suits were brought the complainants in each of said cases demanded of the president and directors of the railroad com-

panies of which they were respectively stockholders that they, said president and directors, cease obedience to and that they refuse to obey said respective orders and acts and each of them and that they forthwith institute proper legal proceedings to test the legality thereof. Said respective railway companies and said officers and agents thereof, respectively, refused compliance with said demands because of the aforesaid extreme fines and penalties de-
213 nounced by the statutes in case such statutes should be held legal and operative as punishments for disobedience *to* said acts and orders.

It has been established by proper and sufficient proofs that complainants were qualified to bring these respective suits and that the Court has jurisdiction of the parties and of the subject matter thereof and that said suits are not nor are either or any of them in any manner or to any extent collusive to confer on the Court of the United States jurisdiction of a case or cases of which it could not otherwise have jurisdiction.

Summarized, the reductions in rates which may be charged by railroad companies for interstate transportation within the state of Minnesota so made by its legislature and commission and challenged by these suits are briefly as follows:

1. Reduction in maximum rates on general merchandise amounting to from 20 per cent to 25 per cent. (Commissioner's order of September 6, 1906.)

2. Reduction in maximum rates on passengers amounting to 33⅓ per cent. (Session Laws of 1907, Chap. 176.)

3. Reduction in maximum rates on grain, lumber, live stock and coal amounting to 7.377 per cent. (Session Laws of 1907, Chap. 232.)

4. Reduction in in-rates in distributing stations amounting, in the Northern Pacific case, to 13.58 per cent. (Commission's order of May 3, 1907.)

III.

Authority of Commission to Make Schedule of Rates.

It is earnestly insisted by complainants that the legislature has never conferred upon the Commission authority to make the orders complained of and that the railroad companies were under no legal compulsion to adopt the rates prescribed by them. It is claimed
214 that the extent of the Commission's power was to investigate and readjust particular rates upon complaint or its own motion on notice to the railroad companies to be affected, the investigation to be limited to the matter complained of, but that it was without authority to make general and comprehensive schedules of rates covering all classes of merchandise and commodities upon all railroads and between all points in the state, and the case of Siler v. Louisville & Nashville Railroad Company, 213 U. S. 175, is confidently relied upon to support this position.

Were it not for the joint resolution of the legislature of April 6, 1905, before referred to, the case cited would seem to support com-

plainants' contention. While it is conceded that such resolution has the force of law, they insist, however, that it authorizes the Commission only "to undertake the work of securing a readjustment of the existing freight rates in this state which will give a more uniform system of rates throughout the state and a uniform schedule of percentage which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in the existing merchandise rates," and that this resolution simply contemplates the preparation of rate schedules in furtherance of the desired end therein expressed to be thereafter put in force by legislative enactment.

Authority to undertake a work without words of limitation includes the prosecution thereof until completion, and especially so in view of the language here used designating just what such work is to effect. The resolution clearly takes the case out of the operation of the law as declared in the case above cited.

It does not seem here material, however, aside from the question of interference, hereafter to be considered, whether the orders complained of are void or valid, provided the rates thereby prescribed are in fact just and reasonable. They have been actually adopted and regardless of the influences which may have led to their adoption, if they are reasonable in fact the complainants would have no standing in a court of equity in attempting to compel a
215 return to excessive rates. If there had been no allegations in the bill that the merchandise rates prescribed by the Commission and put in by the railroad companies were unreasonable and confiscatory, it seems clear that as to such rates no case would be stated calling for the intervention of a court of equity. If put in with authority of the state legislature, as is here held, but are in contravention of the commerce clause of the Constitution or the Act of Congress and therefore unlawfully discriminate against interstate commerce, it is doubtless competent for the Court to adjudge their invalidity and compel the defendant company to return to its former rates or to such rates as shall prevent such discrimination—a matter to be hereafter determined. The cases of Missouri, Kansas & Texas Railway Company, et al., v. Love, 177 Fed. Rep. 493, and In re Arkansas Railway Rates, 163 Federal Reporter 141, suggest the propriety of such course.

IV.

Effect of Prescribed Rates if Confiscatory as to One Line of Railway and Not Another.

It has also been urged that if the prescribed rates or any of them are confiscatory as to any of the railroad companies it operates to invalidate such rates even as to those companies which would through them secure a reasonable return on their investment.

This contention was raised and denied in the Missouri rate case and should be followed regardless of the Master's views. He believes, however, that the question was there correctly decided. Whether invalid provisions in a law shall operate to invalidate the whole law

turns upon the question as to whether the legislators would have enacted the law without such invalid provisions, or, in other words, whether the invalid provisions were a consideration for and influenced their action. If the legislators would probably not have acted at all if the invalid features of the law had been first eliminated, then the whole law falls, otherwise not. If, in the legislation here under consideration, a provision had been inserted that the same should not be operative as to any railroad company whenever the effect thereof would confiscate the property of such company, its validity could not be questioned on such ground. In view of the end sought, there can be no doubt that the insertion of the provision suggested, if deemed necessary for its validity, would have had no influence in preventing legislation in such form. The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the legislature in its action along the lines taken by it. This objection must be overruled.

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V.

Interference With Interstate Commerce.

A question of first importance is raised by the complainants in their contention that the prescribed rates discriminate against and operate as a regulation of interstate commerce, and a large amount of testimony has been offered by them bearing upon this phase of the cases. In their view upon the question so raised it is wholly immaterial whether the prescribed rates are reasonable or not. They contend that State-made rates must be made to conform to and not be relatively less than or unduly discriminate against interstate rates, and that the reasonableness of such interstate rates must be determined in the first instance by Congress or its administrative officers, the Interstate Commerce Commission, acting under the Interstate Commerce Statute.

The orders of the Minnesota Commission and acts of the legislature are strictly limited to state commerce, so far as the language used is concerned, and in terms have no reference to commerce without the state, nor do they apparently seek to control interstate rates. It has been held, however, that "If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid whatever may have been the purpose for which it was enacted, and although the company may do both state and interstate business. Such is an established rule of constitutional construction, as the adjudged cases abundantly show." (Telegraph Co. v. Kansas, 216 U. S. 1.

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It must be true that there cannot be a dual control in so important a regulation as the fixing of rates, the same being of vital importance to the continued existence of the company as a going concern, and if state and interstate rates must bear a certain relation to each other, the standard must be fixed by the sovereign power, the Con-

gress, which under the Constitution is given power to regulate commerce among the states. A power enumerated in the Constitution, with all the incidents thereof, is supreme and cannot be in any manner limited by state action. Subject to such power, so conceded to Congress, all rights are reserved to the State, including the right to regulate its internal commerce. "It needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state legislation." (Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196.)

"It is now settled in this court that a State has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is
218 done amounts to a regulation of foreign or interstate commerce." (Stone v. Farmers' Loan & Trust Co., 116 U. S. 307.)

In Ames v. Union Pacific R. R. Co. (64 Fed. Rep., p. 172), where this question seems to have been raised by counsel for the defendant, Mr. Justice Brewer said:

"Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the Statute, but surely there is no legal compulsion. The Statute of the States does not work a change in interstate rates, any more than an Act of Congress prescribing interstate rates would legally work a change in local rates. Railroad Companies cannot plead their own convenience, or the effects of competition between themselves and other companies, in restraint of the otherwise undeniable power of the State."

On appeal, this statement of the law, not in form, but in effect, is approved by Mr. Justice Harlan.

The matter of discrimination, in the instant cases made so prominent, does not seem to have been called to the attention of the Court, nor does there seem to have been any evidence in the case bearing upon the question. Here the complainants do not claim that "as a matter of law" local rates necessarily interfere with interstate rates or that companies can "plead their own convenience or the effect of competition between themselves and other companies in restraint of the otherwise undeniable power of the State." What they do insist is that the evidence presented in these cases differentiates them from the Ames case and shows that the prescribed rates if observed are so far-reaching in their effect as to compel disobedience to the inhibitions of the Interstate Commerce Act against discrimination, which in terms forbids a carrier "to subject any particular * * * locality * * * to any undue or un-
219 reasonable prejudice or disadvantage in any respect whatso-

ever," and that such discrimination, enforced as it is by state action, if not denounced by the Act of Congress, is violative of the commerce clause of the Constitution, having in mind the purposes of such provision and the historical conditions giving rise to its adoption.

The State claims that the above section of the Federal Act referred to does not prohibit discrimination brought about in conducting state commerce because of the proviso appended to the first section of the act, as follows: "Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state and not shipped to or from a foreign country or to any state or territory, as aforesaid."

Also because it is beyond the power of Congress under the Constitution of the United States to legislate as to or to regulate or prohibit the making of rates by a State as to transportation beginning and ending and wholly within the State.

This would seem to be in effect a declaration that the act is not intended to apply to any subject outside of Federal control. The primary purpose of the act, as has been repeatedly held, is to prevent discrimination, and it would seem to be a misconstruction of the proviso to hold that it authorized or permitted in its most vicious form that which in another form it so strictly inhibits, especially in view of the fact that there can be no question of the competency of Congress to prevent discrimination between interstate localities. It certainly should not be construed as conferring upon a state power or permission to so regulate commerce within its borders as to hamper or be a burden upon interstate commerce and operate as an unrighteous discrimination against localities in other states. It was such discrimination which gave rise to the commerce clause of the Constitution and it is not to be supposed that Congress intended
220 to give the carrier, or the State acting upon it, a free hand with respect to state commerce without regard to its effect upon commerce between the states. It could not do so if it would. A state has no right to burden interstate commerce for the benefit of its own business enterprises or to subject it to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

"It is of the last importance that the freedom of interstate commerce shall not be trammeled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States. While the general rights of the states to regulate their strictly domestic affairs is fundamental in our constitutional system and vital to the integrity and permanence of that system, that right must always be exerted in subordination to the granted or enumerated powers of the general government and not in hostility to rights secured by the supreme law of the land." (Western Union Telegraph Co. v. Kansas, 216 U. S.)

That such burden may be imposed by state rate regulations is well illustrated in the case of Saunders & Company v. Southern Express Company, decided by the Interstate Commerce Commission

January 10, 1910, (Opinion No. 1278), where the facts showed that certain state rates put in by the Alabama Railroad Commission under legislative authority discriminated directly and substantially in favor of the City of Mobile, Alabama, against the City of Pensacola, Florida. In delivering its opinion the Commission says:

"The carriage of traffic by a common carrier for one community or one set of shippers at less than it carries the same traffic for a like distance, and under substantially similar transportation conditions, for another community or another set of shippers is not only in contravention of fundamental right and justice but is essentially iniquitous. If such a discrimination is practiced by a common carrier as between communities or different sets of shippers within the same state and on traffic moving only within the state, redress may usually be had under the state laws. On the other hand, if
221 an interstate carrier is guilty of such a discrimination with respect to interstate traffic, redress may be had under the act to regulate commerce. But when a carrier, as in this case, serves two communities similarly situated, by hauling the same traffic under similar conditions from a point of origin to destinations in the same state and also to the same destinations from an interstate point of origin, it is not altogether clear that existing legislation affords redress against a discrimination, as between the two points, when resulting from an order by the state commission. But unless some such power is lodged somewhere under appropriate legislation, it is evident that State-made rates, if established in pursuance of a narrow or selfish local policy, may not only hinder and harm and burden interstate traffic and interstate interests, but may, if adjusted with that end in view, take from a point in another state a business that naturally belongs to that point or in which it is entitled at least to participate, on the basis of equal rates and equal opportunity. * * *

"The defendant is one concern and one instrument of commerce operating through and across those invisible lines that separate the several states from one another. It has but one corps of officers and employees and but one equipment. Its only object is to serve all the shippers in the territory through which it passes. That object is legitimately effected only when it serves its whole constituent public upon substantially similar terms when the conditions are substantially similar. If it voluntarily makes a distinction between traffic that moves from a point in one state to a point in another state and traffic that moves between points in the same state, and gives to the state traffic lower rates than to the interstate traffic moving under substantially similar conditions, it imposes upon the latter a burden that it ought not justly to bear, and it discriminates against one community in favor of another. The same burden and discrimination follow if instead of voluntarily so adjusting its rates it is compelled so to adjust them by the action of a state commission. It may be that this anomaly in transportation necessarily results from our dual system of government and that a remedy is beyond reach without some amendment to the national constitu-
222 tion. On principle it is clear that a carrier operating through two or more states is but one vehicle of commerce, and all traffic moved by it, whether state or interstate, ought,

when the general transportation conditions are the same, to bear its just proportion of the cost of operation and ought to yield no more and no less than its just proportion of the revenues of the carrier. Any other theory is fundamentally inequitable, illogical and unreasonable. It may be, but on that point we express no opinion, that the Congress may constitutionally protect interstate commerce, as well as the carriers that are engaged in interstate transportation, by requiring that any state traffic moved by such a carrier shall bear its just proportion of the cost of operation and yield its proper proportion of profit to the carrier; and that with such an end in view it may authorize this Commission to fix minimum rates, at least, for state traffic when moved by carriers engaged also in interstate transportation; or that it may provide that no carrier engaged in the interstate transportation of passengers or property may at the same time carry state traffic at rates that are less than the rates exacted by it for interstate carriage of like distance and under like transportation conditions. It has, however, not attempted any such legislation, and whether such an enactment would stand the test of scrutiny by the courts under the constitution as it now stands, and if so, whether it would be desirable from the standpoint of a broad public policy, are questions that must ultimately be determined by the legislative power and therefore cannot profitably be discussed by the Commission in this proceeding."

The Commission were of opinion that the Federal law under which they derived their power did not justify them in interfering with the State-made rates although they found that they operated as a burden upon interstate traffic. In view of this finding it would seem to have been competent for the Commission to require the carrier to ignore the order of the State Commission on the ground that in its operation it violated the commerce clause of the Constitution. In a matter of so much doubt, however, it was a proper exercise of adminis-
223 trative discretion not to compel the carrier to disregard the State-made rate until its validity and their own power in the premises had been judicially determined, and especially is this true in view of the fact that in that case the State was not represented and the action of its commission would have been condemned without a hearing on the part of the State. In the cases before the Master, the validity of the prescribed rates is directly in question, not merely as a matter of legal construction, but upon voluminous evidence, with all interested parties present, and the force and effect of the Federal Act and of the commerce clause can be determined in the light of the facts disclosed by such evidence. The facts in this regard are as follows:

1. The Northern Pacific Railway Company is a corporation and is a common carrier owning, maintaining and operating lines of railway exclusive of lines in Manitoba and its interest in the Spokane, Portland & Seattle railroad comprehending on the 30th day of June, 1908, approximately 7,695.80 miles of track, of which 1,625.20 miles are in Minnesota. Its main line of railway extends from Superior, Wisconsin, and Duluth, Minnesota, which are situated side by side at the westerly end of Lake Superior, and from the cities of St. Paul and Minneapolis, Minnesota, in a westerly direction through the

states of Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the cities of Seattle, Tacoma and Portland on the Pacific coast. Between Duluth and other points in Minnesota reached by it the company has both a local and an interstate line of railway, the interstate line passing through Wisconsin and joining the state line at Carlton, Minnesota, twenty miles westerly from Duluth. The Company has a branch line which leaves the main line at Manitoba Junction, 225 miles westerly from St. Paul, and extends in a northerly direction, leaving the state of Minnesota at East Grand Forks, Minnesota, 320 miles from St. Paul and entering the state of North Dakota at Grand Forks, North Dakota, which is at the same
224 official distance from St. Paul, and running to Pembina, North Dakota, which is on the border line between North Dakota and Manitoba and is 414 miles from St. Paul. It has another branch line which leaves the main line at Wadena, Minnesota, 160 miles westerly from St. Paul, and extends in a westerly direction, leaving the state of Minnesota at Breckenridge, Minnesota, 237 miles from St. Paul, and entering the state of North Dakota at Wahpeton, North Dakota, 238 miles from St. Paul, and running thence to Oakes, North Dakota, 311 miles from St. Paul. The main line of the company leaves the state of Minnesota at Moorhead, Minnesota, 250 miles from St. Paul, and enters the state of North Dakota at Fargo, North Dakota, which is 251 miles from St. Paul.

2. The Great Northern Railway Company is a corporation and is a common carrier owning, maintaining and operating lines of railway comprehending on the 30th day of June, 1908, 8528.98 miles of track, of which 2,779.30 miles are in Minnesota. Its main lines of railway extend from Superior, Wisconsin, and Duluth, Minnesota, in a westerly direction through the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to the cities of Seattle and Portland. Its line between Duluth, Minnesota, and other points in Minnesota reached by it passes through the state of Wisconsin. Between Minneapolis and Larimore, North Dakota, the Company has two main lines of Railway. One of these lines extends from Minneapolis by way of Willmar, Minnesota, leaving the state of Minnesota at Breckenridge, Minnesota, 214 miles from St. Paul, and entering the state of North Dakota at Wahpeton, North Dakota, 215 miles from St. Paul, and running thence to Larimore, 345 miles from St. Paul. The other of these lines extends from Minneapolis by way of Barnesville, Minnesota, leaving the state of Minnesota at Moorhead, Minnesota, 241 miles from St. Paul, and entering the state of North Dakota at Fargo, North Dakota, 242 miles from St. Paul, and running thence by way of
225 Grand Forks, North Dakota, to Larimore, 348 miles from St. Paul.

The main line of the Company between Duluth and Larimore runs by way of Crookston, Minnesota, leaving the state of Minnesota at East Grand Forks, Minnesota, 296 miles from Duluth, and entering the state of North Dakota at Grand Forks, North Dakota, at the same official distance from Duluth, and running thence to Larimore, 325 miles from Duluth.

The Company has a branch line of railway wholly within the state

of Minnesota which leaves the main line at Barnesville and extends northerly to Noyes, 391 miles from St. Paul.

It has another branch line which leaves the main line at Willmar and extends in a southwesterly direction, leaving the state of Minnesota at Jasper, Minnesota, 218 miles from St. Paul, and entering the state of South Dakota, and running by way of Sioux Falls, South Dakota, to Yankton, South Dakota, 311 miles from St. Paul, and to Sioux City, Iowa, 327 miles from St. Paul.

It has another branch line which leaves the Willmar main line at Benson and extends in a southwesterly direction, leaving the state of Minnesota at Nassau, Minnesota, 173 miles from St. Paul, and entering the state of South Dakota and running to Huron, South Dakota, 294 miles from St. Paul.

3. The Minneapolis and St. Louis Railroad Company is a corporation and is a common carrier owning, maintaining and operating lines of railroad comprehending on the 30th day of June, 1906, 632.06 miles of track and operating under lease or trackage rights lines of railroad comprehending on the same date 396.43 miles of track. Its main lines of railway extend from St. Paul and Minneapolis, Minnesota, westerly by way of Winthrop, Minnesota, to Le Beau, South Dakota, from St. Paul and Minneapolis southwesterly by way of Winthrop, Minnesota, to Storm Lake, Iowa, and
226 from St. Paul and Minneapolis southerly by way of Albert Lea, Minnesota, to Des Moines, Iowa.

4. The whole of the railroad properties of each of said companies have for many years constituted and still constitute respective single systems and have been and are operated by each of said companies as such. The cars, engines and supplies of each company customarily have been and are used upon its system wherever required and without regard to whether the business in which they have been or are employed has been or is interstate business or business local to a state. It always has been and is impracticable and apparently is impossible to operate the property of either of said companies situate in any state separately or to carry on transportation of passengers or freight local to a state separately from interstate passengers or freight touching that state. Each of said companies customarily has carried and does carry interstate passengers and passengers local to a state on the same train and in the same car and interstate freight and freight local to a state on the same train and, if less-than-car-load freight, in the same car; and they could not and cannot practicably or in the exercise of any fair economy whatsoever do otherwise. (See Maquire's testimony in G. N. Case, p. 797.)

5. By far the larger proportion of the business of each of said companies is interstate; and by far the larger proportion of the business of each of said companies within the state of Minnesota is interstate.

For example, for the year 1906, taken as a sample year in the testimony, the freight business of the Northern Pacific Company local to the state of Minnesota was but 2.67 per cent of the Company's entire freight business and but 12.33 per cent of the Company's freight business touching the state; its passenger business local to the state of Minnesota was but 5.79 per cent of its entire passenger busi-

ness and but 67.21 per cent of its passenger business touching the state. (Ex. 54 Johnson.)

227 6. For many years the conditions attending the transportation of passengers, of merchandise covered by the Order of September 6, 1906, or of commodities covered by Chap. 232, Gen. Laws 1907, have been and they still are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota and South Dakota reached by the lines of railway operated by either of said companies; and whether such transportation has been or is of business local to a state, or interstate between any two of such states. (See Baird's testimony, N. P. Case, pp. 1436 to 1439, and pp. 1476-7; and Maquire's testimony, G. N. Case, pp. 792 to 795.)

Each of said companies had, prior to the taking effect of the Order of September 6, 1906, and the two-cents maximum passenger fare law, maintained an equable, that is, a relatively fair basis of rates for merchandise and passengers the transportation of which touched Minnesota without regard to whether the transportation was state or interstate between Minnesota and an adjoining state, and each of them still maintains such equable basis of rates for the transportation of commodities covered by Chap. 232, Gen. Laws 1907, regardless of whether it is local within Minnesota or interstate between Minnesota and an adjoining state.

Any substantial change in the basis of rates or in any particular rates due only to the fact that the transportation was interstate or that it was local to a state would have been actual, undue and unjust discrimination in fact; and any substantial difference in rates for the transportation of passengers, merchandise or commodities maintained by either of said companies as between traffic local to the state of Minnesota and traffic which goes between the state of Minnesota and either of its neighboring states will constitute actual, undue and unjust discrimination in fact. (See N. P. Case, Elliott, p-. 1320-1, and Baird, p-. 2198-9.)

228 7. Superior, Wisconsin, and Duluth, Minnesota, are situated side by side at the western extremity of Lake Superior. Each is an important business center. Conditions attending transportation to and from either of them are the same as to or from the other. The railroad companies reaching them have always accorded them and do accord them like rates in and out. They ship and receive the same kinds of freight and to and from the same localities. Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates. The propriety of a parity of rates to and from these localities has always been recognized.

For the same reasons, each of the couples of cities composed of Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, and Wahpeton, North Dakota, and Breckenridge, Minnesota, have always been accorded by the railway companies serving them like rates in and out. The cities in each pair depend upon the same carriers, have substantially the same producing and consuming markets and receive and ship the same kinds of articles. Any substantial difference in

rates as between the cities composing each pair would seriously damage if not wholly destroy the commerce of the city given the higher rate and would be an undue and unjust disadvantage in fact to it and an undue and unjust preference and advantage in fact for its neighboring city. (See Baird's testimony, N. P. Case, p. 1456-8.)

Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the Company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the Company's property in Superior.

8. The schedule comprehended within the Order of September 6, 1906, prescribed maximum rates for transportation within the state of Minnesota which were from 20 per cent to 25 per cent
229 lower than those theretofore established by the Northern Pacific and Great Northern companies, and maintained by them up to the time of the taking effect of the Order for transportation in Wisconsin, Minnesota and North Dakota regardless of whether such transportation was local to either state or interstate between any two of them. If these companies after the installation of the rates prescribed by the Order for transportation within Minnesota had concontinued to maintain the former rates for transportation between Minnesota and an adjoining state, the result would have been serious discrimination against localities in the neighboring states.

For example, prior to the taking effect of the Order the rate maintained by the Northern Pacific on a 200-pound barrel of flour (fourth class) from Minneapolis to Fargo was 68 cents. The schedule fixed 54.2 cents as a maximum from Minneapolis to Moorhead. This is a fair example of the difference between the former interstate rates for transportation between Minnesota and an adjoining state and the rates prescribed by the Order for transportation within the state. (Ex. 41 Baird.)

On the same day that the Northern Pacific Company installed its rates in Minnesota as prescribed by the Order, it reduced its interstate rates between Superior and points in Minnesota to an exact parity with its rates between Duluth and other points in Minnesota, its interstate rates between Grand Forks, Fargo and Wahpeton, North Dakota, and Minnesota points to an exact parity with its rates between East Grand Forks, Moorhead and Breckenridge, respectively, and other Minnesota points and its interstate rates between Superior and Grand Forks, Fargo and Wahpeton, respectively, to an exact parity with its state rates between Duluth and East Grand Forks, Moorhead and Breckenridge, respectively. The reduction was substantial. For example, the reduction in the rate on first class from Superior to Fargo was from 65 cents per cwt. to 54.1
230 cents per cwt.; and on fifth class from 27 cents to 21.7 cents per cwt. (Ex. 41 Baird.)

These reductions were compelled by the necessary and direct effect of the operation of the Order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth; Fargo, Grand Forks and Wahpeton could not have competed with Moorhead, East Grand Forks and Breckenridge, respectively, nor

could Superior have transacted business successfully with Fargo, Grand Forks or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the Order between these localities.

On the same day that the Northern Pacific made these reductions in its interstate rates the Great Northern made similar reductions although its business between Duluth and Minnesota points is interstate. The reason for its reductions from Duluth was to preserve the relation in rates from Duluth which had always existed between localities on the Great Northern and localities similarly circumstanced on the Northern Pacific, and also to meet the reduced rates on the Northern Pacific line. (Maguire, p. 815, G. N. Case.)

9. Moorhead, Minnesota, Fargo and Bismarck, North Dakota, Billings and Butte, Montana, are so-called "jobbing centers." Prior to the taking effect of the Order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of carload rates from St. Paul, Minneapolis and Duluth to these centers and the less-than-carload rates out from these centers to the territory geographically tributary to them respectively had been such as to compare favorably with rates in and out
231 of their local competitors as well as with less-than-carload rates from St. Paul, Minneapolis and Duluth into the territory geographically served by them respectively. The Order of September 6, 1906, as supplemented by the Order of May 3, 1907, substantially reduced carload rates from Duluth, St. Paul and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage in territory accessible to its jobbing industry not only as against Fargo unless carload rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul and Minneapolis unless less-than-carload rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction unless accompanied by a corresponding reduction in carload rates to Fargo from the eastern terminus would have served to build up Moorhead at the expense of Fargo and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of carload rates into Moorhead and less-than-carload distributing rates out on the one hand, and less-than-carload distributing rates from Duluth, St. Paul and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in carload rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and then, unless carload rates from the eastern terminals to Bismarck and less-than-carload rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue

and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on carload lots from the eastern terminals to Bismarck should be correspondingly re-
232 duced. And so on, from distributing point to distributing point.

10. Every rate comprehends two terminal charges, the initial and the final, and a distance haulage charge. It is a cardinal principle of rate-making that a rate for a longer distance should be proportionately smaller than one for a shorter distance; that is to say, that a rate for 500 miles should be less than twice the rate for 250 miles, if conditions of transportation be the same. Because the rate for 250 miles includes two terminal charges, and if the rate for 500 miles were twice the rate for 250 miles, it would manifestly include the equivalent of four terminal charges. Even if the haulage charge were the same per mile for a haul of 500 miles as for a haul of 250 miles, which is contrary to the rule generally applied in rate-making, the rate per ton per mile for the 500 miles should be less than for the 250 miles because in the one case the terminal charges would be spread over 500 miles and in the other over only 250 miles.

Comparison of rates at present maintained by the Northern Pacific Company from St. Paul to various stations in North Dakota and Montana with those established by the Order of September 6, 1906, and now maintained by the Company between St. Paul and Moorhead discloses that the Commission-made rates from St. Paul to Moorhead are in general substantially less than the proportion of the presently maintained interstate rates of the Company to these various points in North Dakota and Montana, based on the mileage in Minnesota as compared to that of the entire haul. For example, the present rate maintained by the Northern Pacific on Class E, merchandise from St. Paul to Miles City, 743 miles from St. Paul, is 39 cents per cwt.; the rate to Moorhead, based on the proportion of 39 cents, which the mileage of the haul in Minnesota is of the entire haul, is 13 cents. The Order allows only 11 cents per cwt. from St. Paul to Moorhead, in which of course are included two full terminal charges. Maintaining rates comparison of which shows this
233 result, involves substantial, undue and unjust discrimination in fact against the interstate localities. (Ex. 46, Baird, N. P. Case.)

11. After the installation by the Great Northern and the Northern Pacific companies of the rates prescribed by the Order of September 6, 1906, it appeared that the sum of the locals from St. Paul to Moorhead and from Moorhead to many points in North Dakota was less than the theretofore established and maintained interstate rates from St. Paul to these points in North Dakota. Both companies thereupon established and now maintain rates from St. Paul to these North Dakota points as a rule no greater than the sum of the locals on Moorhead, but which are substantially lower in general than the interstate rates maintained by them at the time of the taking effect of the Order. Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of the locals based on the state line would have involved undue and unjust discrimination in fact.

It was suggested on the trial by solicitors for defendants that these reductions were made by the companies upon complaint of merchants of St. Paul, Minneapolis and Duluth; but the uncontradicted testimony of the chief witness for the complainants on this point was that the reduction was made in order to protect the power of the railroads to do interstate business,—to remove the ability of the shippers to ship to Moorhead and trans-ship to the point of destination. As a matter of fact, the reasons for such reduction were to prevent trans-shipment at Moorhead in order to take advantage of the lower sum of the locals; to retain on its line traffic which was liable to reach Moorhead over other lines by reason of competition; and as to less-than-carload lots to enable jobbers in the Twin Cities and Duluth to compete with Moorhead and Fargo in territory which otherwise the latter would have exclusively occupied by reason of their closer proximity thereto, an advantage to which it cannot be said such
234 jobbers were entitled although they had been able theretofore to participate in such business.

12. It is one of the fundamental dogmas of rate-making that the haulage charge per mile shall not increase with increasing distance if conditions be the same. The Order of September 6, 1906, promulgates a schedule which for first class merchandise, for example, allows a terminal charge of 11.02 cents per cwt. and a haulage charge of .98 cent per five miles up to 200 miles, then a haulage charge of .98 cent per ten miles for added distance up to 400 miles, and then a haulage charge of .98 cent per twenty miles up to 500 miles—the limit of distance covered by the Order. Both the terminal charge and the haulage charge allowed for the other merchandise classes are a fixed percentage of those allowed for First. Under this schedule a hundred pounds of merchandise transported by the Northern Pacific from St. Paul to Moorhead, 248 miles, has been hauled for 48 miles, at the rate of .98 cent per ten miles when Moorhead is reached. If this same haulage charge of .98 cent per ten miles be applied for the remaining distance of the haul from St. Paul to Spokane, Washington, 1,510 miles from St. Paul (which is taken as a fair example merely for the illustration of this principle), it would produce a rate from St. Paul to Spokane on First class merchandise of $1.79 per cwt. The Interstate Commerce Commission in the Spokane Rate Case has fixed the reasonable rate on First class merchandise from St. Paul to Spokane of $2.50. Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time, necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the State carried on over the same rails and under the same conditions and involves necessarily undue and unjust discrimination in fact against
235 localities westerly of the Minnesota-North Dakota boundary line. Defendants' solicitors, however, insist that in extending the State-made rate beyond the boundary line, if an equable basis is sought, the ton-mile charge for such extension must be found by dividing the total charge to such line by the distance to it from the

point of origin, which would considerably increase the extension rate beyond the State line over the rate if extended by the method suggested by complainants. This method suggested by defendants is not the principle, however, on which the State schedule of rates is constructed, and even so it does not give traffic carried on the extended interstate rate the benefit of the spread of the two terminal expenses over the longer haul.

13. For more than twenty-five years the Northern Pacific Company has maintained an equal basis of rates on merchandise between its eastern terminals and Butte and its western terminals and Butte and between its eastern terminals and localities intermediate between them and Butte and between its western terminals and localities intermediate between them and Butte. Other railroads reaching Butte have during the same time maintained like rates to Butte from Sioux City, Omaha, St. Joseph and Kansas City on the east, and from San Francisco, Sacramento and Los Angeles on the west. Butte has been as the hub of a wheel with spokes representing equal rates to these various cities. Industries have been born and have grown in reliance upon this parity of rates. Intermediate points have had rates fixed in proportion with the Butte rates. Competition of markets and of carriers has brought this about. The Northern Pacific Company cannot maintain its present Commission-made rates between its eastern terminals and Moorhead and at the same time, its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate
236 stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations. If, then, the Northern Pacific maintains the Commission-made rates between its eastern terminals and Moorhead it must either substantially discriminate in fact or destroy the general relation of rates which has existed for many years in the territory between the Missouri river and the Pacific coast.

14. Prior to the taking effect of the Order of September 6, 1906, the Great Northern and Northern Pacific Companies had established joint through rates in connection with other carriers from all localities easterly or southerly of the state of Minnesota to all points in Minnesota westerly of St. Paul and Minneapolis reached by them respectively, and these rates were in force at the time of the taking effect of the Order. After the rates prescribed by the Order were installed, the sum of the locals on St. Paul from all localities southerly and easterly of Minnesota to all localities in Minnesota westerly of St. Paul and Minneapolis reached by these companies was substantially less than the then existing interstate rates between such localities southerly or easterly of Minnesota and such Minnesota localities. Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities east-

erly and southerly of Minnesota and an unjust and undue preference and advantage in fact for St. Paul; because merchandise could have been shipped from all localities easterly and southerly of Minnesota to St. Paul on the theretofore established and then existing interstate rates and distributed from St. Paul to all points westerly of St. Paul and Minneapolis on the rates prescribed by the Order for substantially less charges in the aggregate than would have been incurred for the through haul under the then existing through interstate rates. In order to avoid this discrimination the com-
237 panies forthwith after the taking effect of the Order withdrew the then existing interstate rates and established a new tariff of through rates which were no higher than the sum of the locals on St. Paul. For example, the former through rates from Chicago to Wadena, Minn., on First class merchandise was $1.09 per cwt. The sum of the locals on St. Paul after the taking effect of the Order was $1.004. The present through rate is $1.004, being a reduction of 8.6 cents per cwt. (Ex. 44 Maguire, pp. 818-20, G. N. Case.)

15. The proof is clear that conditions attending transportation are substantially the same in Minnesota and North Dakota and whether the transportation is local to either state or interstate between them. If unjust and undue preference or advantage in rates is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern Companies have, prior to the taking effect of the Order, maintained an equable basis of rates in the territory which these two states compose without regard to state lines. For example, the interstate rates from Moorhead, Minnesota, westerly into North Dakota have been the same as from Moorhead easterly into Minnesota and no conditions have existed or do exist which justify a different basis of rates for eastbound to that for westbound transportation.

Prior to the installation of the rates prescribed by the Order the rate per cwt. of First Class merchandise for 100 miles, for example, out of Moorhead, whether westerly into North Dakota or easterly into Minnesota, was 43 cents. For transportation westwardly into North Dakota this rate from Moorhead still exists. The rate prescribed by the Order and now in effect from Moorhead eastwardly into Minnesota is per cwt. of First Class merchandise 30.6 cents. This disparity of rates for transportation under substantially similar conditions and which disparity increases as distance easterly from Moorhead increases constitutes an undue preference and ad-
238 vantage to the eastwardly localities in Minnesota and a corresponding prejudice and disadvantage to the interstate westwardly localities in North Dakota. If the Companies maintaining this relation of rates, unfair in fact, are to continue to maintain the rates prescribed by the Order, they can remove the existing undue and unjust discrimination in fact against the interstate localities in North Dakota only by reducing the interstate rates from Moorhead to localities in North Dakota to a substantial parity with those maintained from Moorhead to localities at like distance in Minnesota. (Ex. 35 Baird, N. P. Case.)

16. The Great Northern Company owns and operates a branch line to Noyes, 391 miles from St. Paul. The line between St. Paul and Noyes is wholly within the state of Minnesota. Conditions attending transportation of merchandise from St. Paul to Noyes are at least no more favorable than those attending transportation from St. Paul to localities in North Dakota on the main line of the Company and equally distant from St. Paul. All that is claimed by complainants is that conditions are substantially alike. Prior to the taking effect of the Order the rate per cwt. of First Class merchandise for transportation on the Great Northern from St. Paul to a locality 390 miles distant and situate either in Minnesota or in North Dakota was 96 cents. The Commission-made rate from St. Paul to Noyes is 68.8 cents. Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in fact. (Ex. 46 Maguire; testimony, Printed Record, p. 796, G. N. Case.)

17. The Order of September 6, 1906, prescribes a basis of rate-making. Its schedule is framed to secure a fixed relation between rates on the same class for different distances, a fixed relation between rates for the different classes for the same distance, and therefore manifestly a fixed relation between rates for different classes for different distances. These relations are so stable that, given
239 the rate for any distance on any class, the rate for any other distance on any other class may be determined by one who knows the method upon which the schedule is constructed. An avowed purpose of the schedule is to secure equality of rates.

The Great Northern Company operates a line from St. Paul to Sioux City, Iowa, 327 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 218 miles from St. Paul—the distance from St. Paul of Jasper, the border Minnesota town.

It operates another line from St. Paul to Huron, South Dakota, 294 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 173 miles from St. Paul—the distance from St. Paul of Nassau, the border Minnesota town. Between St. Paul and Wilmar, Minnesota, 102 miles from St. Paul, these lines are identical.

Under the schedule prescribed in the Order, the progression of the rate—the haulage charge with increasing distance—breaks in two at a distance of 200 miles. That is to say, the haulage charge for First Class (and for other classes in fixed relation) having been allowed at .98 cent for each five miles up to 200 miles is cut to .98 cent for each ten miles beyond 200 miles and up to 400 miles.

When the line between Minnesota and South Dakota is reached on the St. Paul-Sioux City line, the progression of the rate prescribed by the schedule is .98 cent per ten miles for First Class.

When the line between Minnesota and South Dakota is reached on the St. Paul-Huron line, the progression of the rate is .98 cent per five miles of haul.

It is apparent that unless undue and unjust discrimination shall exist in the rates on one of these interstate lines as compared with

the other, the same basis of making the rate, the same rela-
240 tion between rates for different distances and different classes must be maintained on one line as on the other, and that notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the state of South Dakota, the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached and that break was made within the state of Minnesota.

The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the state of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates. (See Maguire's testimony in G. N. Case, p. 795-6.)

18. Since the taking effect of the Order of September 6, 1906, both the Great Northern and the Northern Pacific Companies have reduced their interstate rates on merchandise from their eastern terminals in Wisconsin and Minnesota to all localities in general in North Dakota. Such reductions have been made as a rule only to such extent as was necessary to remedy the discrimination resulting from the fact that the sum of the local rates from the eastern terminals to the border towns of Minnesota and from such border towns to the several localities in North Dakota was less than the theretofore established and then existing through interstate rates from the eastern terminals to the several respective localities in North Dakota and not to such extent as to remedy the discrimination resulting from the fact that in most cases the general basis of rates on merchandise for traffic within Minnesota is substantially lower than that maintained in North Dakota or for traffic crossing the line between North Dakota and Minnesota notwithstanding the substantial equality of conditions. Such substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists
241 and constitutes undue and unjust discrimination in fact. Complaints have been made to the companies of the existence of this discrimination. [Baird (N. P. Case) 1540-1; 1467; 1523; 1527; 1464; 1507; Elliott (N. P. Case) 1384; 1385; 1404; Maguire (G. N. Case) 794; 832; 841; 798, 799.]

19. St. Cloud, Minnesota, is on the Barnesville main line of the Great Northern and is 168 miles easterly from Moorhead, at which point this line leaves the state of Minnesota and enters the state of North Dakota. Fergus Falls, Minnesota, is on the same line, 56 miles easterly from Moorhead. They are each distributing centers, so declared by the Commission's Order of May 3, 1907. Whether discrimination in fact exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls as

for the same distance westerly of St. Cloud. Because they are distributing rates from Fergus Falls to points within that distance westerly should be the same as from St. Cloud to points of equal distance westerly. Rates on articles covered by the Order of September 6, 1906, from St. Cloud westerly within such distance of 168 miles are substantially lower than those maintained by the Great Northern to points in North Dakota of like distance westerly of Fergus Falls. Such disparity depends only on the fact that in the case of the higher rates the state boundary line is crossed and on no other condition whatsoever; and it constitutes undue and unjust discrimination in fact not only against the shipper at Fergus Falls, but, as well, against the consumer in the North Dakota towns in question.

20. The main lines and branches of the Northern Pacific and Great Northern Companies within the states of Minnesota and North Dakota lie (wholly, excepting certain limited tracts
242 in which grain cannot be grown—such as the Bad Lands of North Dakota) within grain fields; and grain is shipped in substantial quantities from nearly all stations in these fields to Duluth, Minneapolis and Superior.

Shipments of coal originate at the Head of the Lakes, that is to say, Duluth, Minnesota, or Superior, Wisconsin, and find their destination at all localities served by the Companies or either of them in Minnesota and eastern North Dakota.

Shipments of lumber originate at Duluth, Cloquet, Little Falls and other points in Minnesota and are destined to points throughout Minnesota and North Dakota.

Shipments of live stock originate in Minnesota, North Dakota and eastern Montana and go to South St. Paul or Chicago.

Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota or Minnesota or whether it finds its termination at one of the Minnesota terminals of the Companies or at Superior, Wisconsin.

Conditions attending transportation are substantially the same as to all these commodities moving westwardly whether the shipment originates at a Minnesota point or at Superior, Wisconsin, or whether it finds its destination in Minnesota or North Dakota.

Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal whether the shipment originates at Duluth, Minnesota, or at Superior, Wisconsin, and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for transportation of lumber whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportaion of live stock whether
243 the shipment originates in Minnesota, North Dakota or eastern Montana involves an undue and unjust prejudice and disadvantage in fact against the localities subject to the higher basis of rates and an undue and unjust preference and advantage in fact

to the localities given the lower basis. Establishing the rates prescribed by Chapter 232, Gen. Laws, 1907, and maintaining these rates for transportation wholly within Minnesota simutaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana would involve on the part of the Northern Pacific and Great Northern Companies undue and unjust discrimination in fact against shippers, receivers and localities transacting the interstate business and would seriously impair the interstate business of the carriers. If the Companies shall be compelled to maintain within Minnesota the rates prescribed by Chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota and Minnesota points and Superior to a substantial parity with the basis preseribed by Chapter 232 in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business as well as in order to protect the interstate business of carriers against serious impairment.

Such reduction must be substantial. For example, the present rate on soft coal from Duluth to Wahpeton is $2 per ton. The rate prescribed by Chapter 232 from Duluth to Breckenridge is $1.31 per ton. That act provides that a minimum carload of soft coal shall be 30,000 pounds or 15 tons. So that the reduction that will be necessary to avoid discrimination against the interstate locality in the rate on soft coal will be $10.35 per minimum carload.

244 21. Duluth, Minnesota, Superior, Ashland, Green Bay, Manitowoc, Sheboygan and Milwaukee, Wisconsin, Gladstone, Michigan, Chicago, Illinois, the Peoria, Illinois, district, the Springfield, Illinois, district, the Streator, Illinois, district, and the La Salle, Illinois, district, are all competitive points for the distribution of coal into the state of Minnesota.

For many years rates on coal from the various distributing points to localities in southern Minnesota have borne such a relation as to admit of free competition of the various distributing points and of the carriers serving them.

If the rates on coal prescribed by Chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by Chapter 232, from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by Chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed unless rates shall be similarly reduced from these various distributing centers to localities in these two districts.

22. Interstate rates on cattle, hogs, sheep and coarse grain would be affected by the rates prescribed by Chapter 232 in the same manner as has been found with regard to rates on wheat and coal.

23. Under the milling-in-transit privileges, so-called, owners of wheat at any point in Minnesota, North Dakota or South Dakota may pay rates equal to the sum of the rate between the point of shipment to Minneapolis and the proportional rate from Minne-
245 apolis to Chicago (for many years and at present the sum of 7.5 cents per cwt.), have it milled at Minneapolis and within a limited period of time forwarded to Chicago as flour.

In order to allow mills located at other towns in Minnesota to compete with Minneapolis a like milling-in-transit privilege has been accorded owners of wheat to ship via such other towns as via Minneapolis; and mills have been established in many such towns under a guaranty that rates into the towns in which such mills are located on wheat in and flour out to Chicago should not exceed the rates from the same points to Chicago via Minneapolis with the milling-in-transit privilege. Chapter 232, Gen. Laws 1907, substantially reduces rates on wheat within Minnesota. The result will be, if that law takes effect, that the milling-in-transit rate from points in Minnesota via Minneapolis to Chicago will be automatically reduced substantially. Unless then all interstate rates between Minnesota points and Chicago via some interior mill town and with a milling-in-transit privilege shall be reduced to a substantial parity with the reduced milling-in-transit rate to Chicago via Minneapolis, Minneapolis will have a substantial advantage in its interstate rates on wheat over the various mill towns in the interior of the state and wheat in general will as a result of this advantage go to Minneapolis.

24. Prior to the taking effect of Chapter 97, Gen. Laws 1907, the general basis of rates for the transportation of passengers between any two points on the Northern Pacific System had been for some years three cents per mile for passengers of twelve years of age and over, and one and one-half cents per mile for passengers under twelve years of age.

Chapter 97, Gen. Laws 1907, prescribes as a maximum for transportation of passengers wholly within the state of Minnesota two cents per mile for passengers of twelve years of age or over and one cent per mile for passengers under twelve years of age.

246 After the maximum rates prescribed by Chapter 97 were installed, the sum of the locals between Moorhead and other Minnesota points and Moorhead and points westerly thereof was less than the then existing interstate rates between Minnesota points and points westerly thereof.

The result of this disparity between the through interstate rate over Moorhead and the sum of the locals over Moorhead was this: In the first month after the taking effect of Chapter 97 the revenue for passenger business on the Northern Pacific between Moorhead and other Minnesota points increased 647 per cent over that for the corresponding month of the preceding year, while, eliminating Moorhead business, the revenue for passenger business within the state decreased 2 per cent. In June, 1907, the second month after

the taking effect of Chapter 97 there were sold by the Northern Pacific Company 4037 tickets between St. Paul or Minneapolis on the one hand and Moorhead or East Grand Forks on the other as compared with only 172 such tickets in the corresponding month of the year before; and in June, 1907, there were sold only 173 tickets between St. Paul or Minneapolis on the one hand and Grand Forks and Fargo on the other as compared with 984 such tickets in the corresponding month of the year before. In May and June, 1906, only one cash fare was collected on a train between Moorhead and St. Paul or Minneapolis; in those months in 1907 there were 1168 full cash fares and 82 cash half-fares so collected.

These facts compel the conclusion that the necessary, immediate, direct effect of the operation of Chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead.

25. Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the Company, one of which should cover the mileage
247 in Minnesota, discrimination in fact against the interstate passenger through Moorhead on the Northern Pacific still existed and was practiced. It existed against a passenger who, applying for a through ticket did not know that the sum of the locals on Moorhead was less than the through rate, against the pas-enger with a trunk which he could not check through unless on a through ticket, against a passenger who was compelled to use a sleeping-car.

As soon as it reasonably could do so, the Northern Pacific remedied this discrimination by reducing all its interstate fares for passenger transportation through Moorhead to an amount no greater than the sum of the locals over Moorhead. Meantime and before tariffs establishing the new reduced interstate rates over Moorhead had been filed, the state of Wisconsin had enacted a two cents per mile passenger fare law, and the state of North Dakota a two and one-half cents per mile law. The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile for the mileage in North Dakota. And the rates newly established by the Northern Pacific Company jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota.

These reductions in rates were compelled by the necessary immediate and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume.

248 26. Prior to the taking effect of the respective orders complained of and of the two cents maximum passenger fare law,

the tariffs of the Great Northern and Northern Pacific Companies for the transportation of passengers or merchandise in Wisconsin, Minnesota, North Dakota and South Dakota were fair as between the different states, and the local tariffs in each state were fair as compared with the interstate tariffs between such states or any two thereof; and the tariffs now maintained by the Companies and each of them for the transportation of commodities covered by Chapter 232 are fair as between these states, and the local tariffs in each state are fair as compared with the interstate tariffs between such states or any two thereof.

The installation of the rates prescribed by the respective Orders destroyed that fairness as to merchandise rates, the installation of the two cents passenger rate destroyed it as to passenger rates, and the installation of the rates prescribed by Chapter 232 would destroy it as to rates on commodities covered by it.

27. It is wholly impossible for carriers situated as are the Great Northern, Northern Pacific and Minneapolis & St. Louis companies to maintain materially lower rates or a materially lower basis of rates or a different classification of subjects of transportation, or a different relation between rates for different classes of merchandise, for traffic wholly within Minnesota than for that between Minnesota and any of its neighboring states without unjust and undue discrimination in fact against the localities in the neighboring states, and without serious impairment of the volume of the interstate business of the carriers. Such lower basis of rates within Minnesota than between Minnesota and its neighboring states would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring states and the enhancement of the value of property in Minnesota and the serious impair-
249 ment of the value of the property of all business men as well as of that of the carriers themselves in the neighboring states.

28. Duluth and Superior, Grand Forks and East Grand Forks, Fargo and Moorhead, and Wahpeton and Breckenridge are so situated that each pair must be considered for the purpose of rate-making as one locality. Both as a practical matter of the operation of a railroad and in order that undue and unjust discrimination as between the members of any pair may be avoided, each city of each pair must have rates equal to those accorded to the other city. If different rates, a different classification or a different basis of rates be lawfully prescribed by one regulating power in or out of one city of any pair to those prescribed by another regulating power in or out of the other city of the pair, the carrier serving them both must, in order to avoid undue and unjust discrimination in fact as between them as well as to preserve their own power to transact business with each of them, adopt for each city the lower rates or basis of rates, or classification prescribed for either city. (As bearing generally upon the foregoing findings, numbered 1 to 28, relating to the question of interference, see testimony of Staples, (N. P. Case) pp. 2646, 2649, 2650, 2704-2790, 2891, 2916).

29. If it shall be necessary for the companies involved, in order that discrimination may be avoided, or in order that the companies may preserve the volume of their respective busi-

nesses in interstate transportation free from impairment in volume, to install for their interstate business a basis of rates no higher than these respectively prescribed in the Act and Order complained of, and to extend the rates for their interstate long-haul business upon the principal provided in said Act and Order, the result will be a substantial diminution in the revenues of the companies from their interstate business. For example, the diminution in the revenue of the Northern Pacific Company for the year ending June 30,
250 1906, the last fiscal year prior to the taking effect of the Order of September 6, 1906, from its interstate business in transportation of commodities covered by Chapter 232 alone, if the basis prescribed by Chapter 232 had been applied to its rates for such interstate business, would have been $4,193,283.04; and the loss in such interstate revenue for such year for transportation of merchandise covered by the Order of September 6, 1906, if the basis prescribed by the Order had been applied to its rates for such interstate business, would have been $4,119,761.96. The loss in its interstate business from passenger transportation, if the two cents maximum rate had been applied during such year, would have been $1,444,955.35, or a total loss, on account of the Acts and Orders complained of, of $9,758,000.35.

If, in order to prevent discrimination as between different states, it shall be necessary for the companies involved to apply for local business within the respective states, the same basis of rates as those prescribed for business local to Minnesota by the Acts and Orders respectively complained of, the loss in revenue to the companies involved will be substantial. For example, in the year 1906 the loss in revenue of the Northern Pacific Company, if the basis prescribed by Chapter 232 had been applied to its local business in transportation of commodities covered thereby in other states, would have been $198,540.51; and its loss in revenue, if the basis of rates prescribed in the Order of September 6, 1906, had been applied to its local business in other states for transportation of merchandise covered thereby, would have been $952,644.83, or a total loss on freight of $1,151,185.34; and if the two cents maximum passenger rate had been applied to its local business in other states, the loss in revenue would have been $990,908.82, or a total loss, under the Acts and Orders complained of, of $2,142,094.16.

The foregoing findings of facts with respect to the effects of the prescribed rates upon interstate traffic, established as they are
251 by convincing and undisputed testimony and supported by the records and papers of the respective companies, are made without regard to the justness or otherwise in fact of the interstate rates so affected by such local rates, and as this can be determined only by Congress or its administrative agent the Interstate Commerce Commission, subject of course to the power of the Court in a proper case to prevent confiscation or extortion, this Court cannot, in this suit, determine the reasonableness or otherwise of such interstate rates. Before it can take cognizance thereof the question must have been presented to and passed upon by the proper Federal tribunal created for that purpose. Until then, as they are legal, they must be accepted as reasonable and the State can take no action

which will compel a modification thereof as a condition of doing interstate business.

Interference with interstate commerce arises from the fact that to prevent discrimination the rates must be modified so as to correspond substantially with the State-made rates and from the further fact that interstate commerce cannot in general be maintained at all unless they are so modified. It was directly held in Louisville & Nashville Railway Co. v. Eubank, 184 U. S. 27, that the carrier cannot be compelled to adjust its interstate rates with reference to State-made rates, and since they must harmonize to prevent unjust discrimination and to enable the carrier to retain its interstate business, the State in its regulation of rates must do so with reference to their effect upon interstate commerce.

The facts as found establish conclusively that the State in the rates prescribed by it has not kept within the limitations imposed upon it and has exceeded its constitutional powers in that such rates constitute a direct interference with and impose a burden upon interstate commerce and effect unjust discrimination as between interstate localities.

If when this case was in the Supreme Court, and on the
252 record then before it the Court could say with reference to the claim of interference then made that "The question is not, at any rate, frivolous," it would seem that on the facts here found to exist a conclusion that the prescribed rates operated as a direct interference with and a burden upon interstate commerce must be inevitable. It follows that the relief sought in these several suits must be granted.

The question as to whether the orders of the state commission and the acts of the legislature complained of constitute such an interference with interstate commerce and operative as a burden thereon by reason of the matters of fact hereinbefore found to exist is, however, not altogether free from doubt, and it is proper, therefore, regardless of the views of the Master, that he should proceed to make findings upon all the issues in the case.

VI.

Valuations of Property Devoted to Public Service.

In determining the remaining issues in the case, the initial step is to ascertain and determine the value of the property devoted to the public service and upon what basis such valuations should be made. In the leading case of Smyth v. Ames, 169 U. S. 522, adhered to and constantly cited in every rate case since coming before the courts, the following language is used:

"It cannot be assumed that any railroad corporation, accepting franchises, rights and privileges at the hands of the public, ever supposed that it acquired, or that it was intended to grant to it the power to construct and maintain a public highway simply for its benefit, without regard to the rights of the public. But it is equally true that the corporation performing such public services and
253 the people financially interested in its business and affairs

have rights that may not be invaded by legislative enactment in disregard of the fundamental guarantees for the protection of property. The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it.

* * * * * * *

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Here we have a clear declaration that a corporation performing a public service cannot be required to use its property for the benefit of the public without receiving just compensation therefor, not some compensation but just and reasonable compensation, based upon the value of such property. There are, of course, exceptions to this rule. Under no circumstances can the rates be excessive, extortionate or unreasonable. They must be just to the public as well as to the carrier. If the road was unwisely conceived, unfavorably
254 located and not constructed in response to public demand, a return upon such value is not to be expected if it compels unjust rates. But no conditions exist in these cases to take them out of the general rule.

It also appears from this and subsequent cases that it is the present value of the property which is to be taken as a basis of rates. As again stated by the same Court in Wilcox v. Consolidated Gas Company, 212 U. S. 19: "There must be a fair return upon the reasonable value of the property at the time it is being used for the public * * * and we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule."

This clearly shows that the company is to share as well as the public in the general growth and prosperity of the country. It would seem, therefore, that the value of these properties can best be determined by reference to the cost of reproduction at the present

time. As stated in the Wilcox case, cited in the decision rendered by the lower court upon a review of prior decisions of the Supreme Court of the United States,

"It is impossible to observe this continued use of the present tense in these decisions of the highest court without feeling that the actual or reproductive values at the time of inquiry is the first and most important figure to be ascertained."

The roads under consideration were constructed and completed many years ago and what may have gone into them, if it could be determined with reasonable certainty, would not take into consideration the changed condition of the country since their original construction, its growth and prosperity—in which the companies are entitled to share—and by reason of changed conditions
255 and lapse of time it has little weight in arriving at present values. As stated by Judge Hook in the recent case of Missouri, Kansas & Texas Railway Company v. Love, et al., in this circuit,

"There is another matter to be regarded, not specifically mentioned in the above excerpt from the opinion of Mr. Justice Harlan. An established railroad system may be worth more than its original cost and more than the mere cost of its physical reproduction. It has passed the initial period of little or no return to its owners which, of greater or less duration, almost always follows construction and is not infrequently marked by default and bankruptcy. The inevitable errors in its building which finite minds and hands cannot avoid have been measurably corrected, time and effort have produced a commercial adjustment between it and the country it was intended to serve, relations have been established with patrons, and sources of traffic have been opened up and made tributary. In other words, the railroad, unlike one newly constructed, is fully equipped and is doing business as a going concern. It has attained a position after many experiences common to railroad enterprises which entail loss and cost not paid from current earnings and which correspondingly make for value."

It is here proper to say that the foregoing decision was written in a very carefully considered case, in which many of the issues were practically the same as in the instant cases, and wherever applicable it must control the Master in determining the questions here raised. And this is so not only because it is a decision of one of the judges of this court but because it is in harmony with other like decisions of this court and of the Supreme Court of the United States and contains, as the Master believes, a comprehensive and accurate statement of the law and discloses a lucid conception and clear expression of the facts which are very generally found to exist in all these railroad rate cases. Practically everything contained in that decision is applicable to or has a more or less direct bearing
256 upon the cases here under consideration and completely covers and denies many of the contentions of counsel for the State—urged at great length and with marked ability before the Master.

In the light of this decision and others therein referred to and approved, our first duty is to ascertain the fair value of the property devoted to the public service.

To this end a large volume of testimony was produced before the Master on behalf of complainants and the State, respectively, as to the reproduction cost of such property—and by such property is included only that which is used for the benefit of the public and which, with the revenue directly or indirectly derived from such use, is alone to be considered in determining the question of a reasonable rate. Other revenues and other properties the company may have but as to them the public has no concern.

Prior to suit brought the State by its Railroad & Warehouse Commission called upon the defendant railroad companies and all other like companies in the state for a statement of all the properties of the companies, respectively, devoted to public use, with the valuation and the cost of reproduction new within the state, such statement to be made and returned upon itemized blank forms or schedules furnished for the purpose consisting of thirty-nine different items, into which divisions were to be made, and which when filled out would constitute an estimate of cost of reproduction of all the physical properties of each of said companies as made by it.

This led to a personal examination of the physical properties of the railroad companies which was made by the State's engineer, employed for the purpose, and also by the agents and officers of the respective companies, and such schedules as so filled out and returned, with sundry modifications thereof by them made, have been produced before the Master, and testimony in support thereof was given by witnesses making such examinations. Three competent
257 and reliable real estate agents in each of the cities of St. Paul, Minneapolis and Duluth were selected by the railroad companies to make an appraisal of the terminal properties, exclusive of improvements, of each of the roads in their respective cities, and the valuations placed upon the properties by said several sets of appraisers in their respective cities, supported by their testimony produced before the Master, have been used by complainants as a basis for terminal values in said respective cities. These examinations and appraisements of railroad physical properties were made in the years 1906 and 1907 and the valuations so found were brought up to June 30, 1908, by adding thereto the valuations of properties acquired after such examinations and appraisements were made at the actual cost thereof.

The evidence discloses a wide difference of opinion with reference to the value of these properties, and in fairness to both parties to the controversy the Master has made findings as to each item in the schedule referred to and produced before him, and, where as to any item there is a very substantial difference between the parties, or between them and the value so found by the Master, he has briefly stated his reasons for the findings made.

The Master's findings of value are as follows:

VII.

Real Estate Valuations as of June 30, 1908.

Item 1. Lands for right-of-way, yards and terminals:

Northern Pacific case, amount allowed	$21,024,562.90

This amount is made up as follows:

	Terminal properties, St. Paul appraisement of Read, Watson & Taylor, as modified by railroad company	7,645,100.24
	Add 5 per cent for the cost of acquisition and consequential damages	382,255.01
258	Property acquired after appraisement	328,725.69
	Minneapolis, appraisement of Elwood, Barney and Ridgeway, as modified by railway company	4,027,616.17
	Add 5 per cent for acquisition and consequential damages	201,380.80
	Property acquired after appraisement	227,737.26
	Duluth, appraisement of Stryker, Mendenhall and Little	3,602,443.43
	Add 25 per cent for railway value, cost of acquisition and consequential damages	900,610.85
	Total value of terminals	17,315,869.45
	Lands outside of terminals	3,708,693.45
	Grand Total	21,024,562.90
	Great Northern case; amount allowed	25,172,630.80
	St. Paul, appraisement of Read, Watson and Taylor	6,433,348.00
	Add 5 per cent for cost of acquisition and consequential damages	321,667.40
	Minneapolis, appraisement of Elwood, Barney and Ridgeway	11,619,765.00
	Add 5 per cent for cost of acquisition and consequential damages	580,968.15
	Duluth, appraisement of Stryker, Mendenhall and Little	713,280.00
	Add 25 per cent for railroad value, cost of acquisition and consequential damages	178,320.00
	Total value of terminals	19,847,366.55
	Lands outside of terminals	5,325,284.25
	Grand total	25,172,650.80
	Minneapolis & St. Louis case; amount allowed	5,999,397.90
259	Minneapolis, appraisement of Elwood, Barney and Ridgeway	4,556,298.00
	Add 5 per cent for cost of acquisition and consequential damages	227,814.90
	Land outside of terminals	1,215,285.00
	Grand total	5,999,397.90

In arriving at the foregoing valuation of terminals, upon a careful examination of the testimony the Master has taken the valuation of the terminal properties made by the three appraisers appointed by the railroad companies in each of the three cities named and who gave their testimony in these cases as found in the record and made such valuation a basis for his conclusions. He is of opinion that the reductions made from such valuations by the Northern Pacific Company as to its properties in St. Paul and Minneapolis were clearly justified by conditions differentiating the properties upon which such reductions were made from other properties valued by the appraisers and which were not fully appreciated by them. They were much farther removed from the business centers of the cities and partook more of the nature of suburban property.

While it is true that the highest value of these terminal properties is their adaptability for railroad purposes and they must be acquired in a continuous tract suitable and convenient to meet the demands of the business and traveling public, thus largely enhancing their value, yet it is not true that these values for such purpose are limited only by the needs of the company and upon the theory that it must have the property or abandon the enterprise. It is not the needs of the company but the peculiar fitness and adaptability of the property for railroad purposes which gives it an enhanced value—often very much greater than for any other purpose. The fact that there is other property equally available in the immediate vicinity that a line of road of substantially the same efficiency and answer-
260 ing a like purpose can be secured by changing its course or the location of terminals may be properly taken into consideration as bearing upon railroad value. While it is true that in these cases these particular terminals and rights of way are the subject of valuation, and no other, still such valuation must not be based upon the assumption that the companies must have them at any price and must pay anything the owner sees fit to exact, but should be determined and controlled, as far as may be, by a survey of the whole situation, and comparisons, where they can be made, with other properties which are in like manner available.

The right of eminent domain is given to the company for the purpose of preventing the property owner from taking advantage of the necessities of the company as to any particular tract. While it is intended to secure to him its full and fair value for any purpose for which it is best adapted—and to this end an appeal is given to the courts from unrighteous awards—we are not to lose sight of the fact that railroads must be constructed along continuous lines and that the topography of the lands through which the lines are projected has much to do with their availability for railroad purposes and that such availability necessarily and properly enhances their value, for which the owner is entitled to compensation, and so it comes about that properties so available and favorably situated for the purpose have a much greater value than other adjoining or adjacent properties not so conditioned.

The Master is of the opinion that the appraisers of the St. Paul and Minneapolis terminals were fully impressed with their value for

railroad purposes and their appraisement, as verified by them before the Master and as modified in the Northern Pacific case, is a generous valuation and should be accepted as full railroad value of the terminal properties and has been by him so accepted with an addition of five per cent to cover cost of acquisition and conse-
261 quential damages, and which seems ample for the purpose in the large cities. The peculiar location of the properties did not seem to require a large increase on this account.

In Duluth, the appraisers were much more moderate in fixing values and seemed to have adjusted the same with reference to the adaptability of the property for general business enterprises and not to have taken into consideration their special and increased value for railroad purposes. It is determined that their appraisement, increased by twenty-five per cent thereof, all things considered, will fairly cover reproduction cost, and their valuation is fixed at such sum accordingly.

The Master has not overlooked the testimony offered by the State bearing upon these valuations and has given to it such consideration as in his opinion it was entitled to. It is proper to say, however, that it has not impressed him as entitled to much weight. The avowed purpose of the State was to get away from opinion values as much as possible owing to the fact that witnesses are necessarily and unconsciously influenced by the interests of those at whose instance they are called, however fair and unbiased they may intend to be—considerations which the Master in fixing values has kept in mind. To this end the State has not offered the opinion of any witness as to the value of any of these terminal properties,—ignoring, as it would seem, the fact that real estate values are necessarily and largely a matter of opinion when applied to any particular tract or parcel of land. As a substitute therefor the State's engineer and chief witness on this subject has adopted a method, in each of the three terminal cities, substantially as follows, taking the city of St. Paul as an example:

He ascertained from the records the selling price of genuine sales of land for a period of years, and amounting to a large number, in every part of the city. The selling price of the lands without improvements, so far as this could be ascertained, was compared with the assessed value thereof, and it was found that on the aver-
262 age the assessed value was about sixty per cent of the selling price of such lands, and from this comparison the market value of the lands for general purposes was ascertained. Then the lands at varying width on each side of the side of the center line of the railroad land to be valued was divided into sections so that the lands in each section, according to his judgment, should be as nearly as practicable of like value, and the assessed value of the lands in such section was obtained and such assessed value was determined to be sixty per cent of the market value of the lands assessed. The market value, or, as he styles it, the "true value" so found was then applied to the railroad lands within the section, and to find their railway value, seventy-five per cent thereof was added to such market value, it having been determined by him that railroad com-

panies have to pay on the average seventy-five per cent more for properties required by them than the market value as so found.

Such, in brief, is the State's method of producing terminal property values, and generally known as the assessment and sales method.

It is conceded that when applied to any particular tract of land it cannot be relied upon, but it is claimed that when applied to extensive contiguous tracts, as are rights of way, the doctrine of averages will bring about reasonably correct results. To make a market value assessment, the assessor could not rely on such methods with respect to any particular tract, but would be compelled to make a personal inspection and determine whether assessment must be reduced or increased and where it stood with reference to such average. We can understand that, for the purpose of equalizing values as between counties where many contiguous sections of land are under consideration and for the purpose of making each county pay its relative proportion of state taxes, such method would be of great value by reason of the broad base for purposes of comparison,
263 but the relative market value for the counties having been ascertained, then a personal inspection by the assessor would be necessary of each tract assessed to determine whether the assessment must be reduced or increased, that is, whether as previously assessed it was above or below the general average.

The evidence shows that the railroad lands in St. Paul constitute about eight per cent of all the assessed lands in the city, and, distributed among all the railroads owning terminal properties, each has but a very small per cent thereof. These considerations, added to the notoriously gross inequalities of assessments, compel the Master to give little weight to testimony of this character. On the other hand, he does not conceive he is bound to accept opinion testimony as absolute but only as a large determining element in connection with all the facts and circumstances disclosed in the evidence, and this has been done in reaching his conclusions. He has given careful consideration to actual purchases recently made in acquiring property for railroad purposes and cited to show that they substantiate values fixed by the witnesses on either side, for of course they are of great value for such purpose.

No deduction has been made for street crossings or parts of streets used for right of way held under rights acquired from the respective city authorities without acquisition of the fee. For railroad purposes these rights are substantially as valuable as if held under absolute title. They are permanent in character and in case of reproduction would cost practically as much as private property.

With reference to right of way values outside of terminals, opinion testimony has been submitted by both parties, and, save in the Minneapolis & St. Louis case, there are wide differences between them. They have both used multipliers, generally of three, to cover cost of reproduction over market value. That is, the market value of adjacent lands has been ascertained and applied to the
264 right of way lands and such value multiplied by three to ascertain what it would cost a railroad company to acquire the property. Whether this multiple has been used in the same

manner, having in mind the same basis is somewhat doubtful. In determining such basis the Master believes the witnesses for complainants have been somewhat expansive, influenced measurably by the increased value for railroad purposes over its ordinary market value for farm purposes, and have used too large a multiplier. At the same time, the testimony of the chief witness for the State is much impaired by the fact that he evidently based his estimates upon valuations as fixed by the complainants' witnesses, of which they are found to be, in some fifty-two villages on the Northern Pacific road, an exact per cent and ranging from twenty to eighty per cent lower than such valuations. (See Exhibit 75—Cooper.) It is not doubted that he made as careful and painstaking effort, within the limited time he was able to devote to the purpose, as was practicable to ascertain and determine the market value of the properties appraised, but the weight of such testimony would have been manifestly greater if valuations had been independently fixed by him without regard to those previously made by the railroad company. At the same time the fact that his values of such property in the Minneapolis & St. Louis case, as also of much other property on that line of railway, were so nearly the same as the value of the chief witness for complainants in that case that they were able to compromise their differences has a tendency to corroborate his values on the other roads.

Upon careful consideration of the evidence and all the circumstances thereby disclosed bearing on the question, seventy-five per cent of the valuations as fixed by complainants' witnesses has been determined upon as the fair reproduction value of the property in the Northern Pacific and Great Northern cases.

265 Item 2. Grading, clearing and grubbing:

Northern Pacific Case: Amount allowed.....$12,331,541.52

After allowance by State for adaptation and solidification placed by it in an item by itself, and by complainants included in this Item 2, the difference between the parties is substantially $850,339.68, and is fully accounted for by inadequate unit prices and insufficient quantities adopted by the State's witness as the basis of his estimate.

Item 2. Great Northern case:

Amount allowed $21,685,802.00

Complainant claims for this item $22,155,453, which includes $3,235,022.91 allowed by the State as a separate item for adaptation and solidification of road-bed and $448,227 for additions to the road after June 30, 1907—to which time only the State's estimates were made. This left a difference between the parties of $1,798,792.85. I have credited the complainant with this difference except items for abandoned right of way, amounting to $135,876, and the further sum of $333,775 for estimate of work not of record. There seems to be no substantial reason for not allowing for the extra work

shown by the records and also the usual ten per cent increase on work shown only by profile—a usual allowance for profile estimates and so recognized and accepted by the State's engineer in the Northern Pacific Case. As to unit prices, the weight of evidence in this and the other cases shows that the State's witness in the unit prices used by him failed to allow an adequate amount for extra cost of other than contract work and in this respect unit prices fixed by complainants' witnesses should be accepted.

Item 2, Minneapolis & St. Louis case:

Amount allowed $2,551,690.00

Item 3, protection work, rip-rap and retaining walls:

Northern Pacific case: Amount allowed..... $374,091.53

The State's testimony would very materially increase this amount.

266 Item 3, Great Northern case:

Amount allowed $850,069.00

It is conceded that as to this item the only difference between the parties is as to the unit prices. In the Northern Pacific case the price of $2 per yard for rip-rap claimed by complainant's witness seems to have been conceded by the State, and no reason appears for the State not conceding it here and insisting, as it does, that only $1.25 per yard should be allowed.

Item 3, Minneapolis & St. Louis case:

Amount allowed $52,240.00

Item 4, Tunnels:

Northern Pacific case: Amount allowed..... $253,250.00

The chief difference between the parties concerning this item is as to the allowance of anything for the Seventh street viaduct, so-called, in the city of St. Paul, constructed by the city after the road was built. The Northern Pacific Company did not construct this tunnel, nor does it appear from the evidence that even under the latest decisions of the courts it could have been compelled so to do. It is, so far as appears, a permanent structure not likely to require repair or replacement; at least the evidence does not disclose to the contrary. It forms an adequate passageway for the movement of trains, as much so as if created by natural conditions, and is substantially different from overhead bridges and like structures which the company could be compelled to reconstruct and maintain and which will require frequent repairs, renewals and replacements. If such were required, it may be assumed, in the absence of testimony to the contrary, that the city would be obliged to do the work and that the company's rights were properly safeguarded when it consented to the construction of a causeway over its right of way.

Item 4, Great Northern and Minneapolis & St. Louis cases. There are no tunnels on these lines in Minnesota.

267 Item 5, Cross-ties and switch-ties:

Northern Pacific Case: Amount allowed.....$3,657,576.70

Accepted as claimed by complainant and includes transportation.

Item 5, Great Northern case:

Amount allowed $5,460,809.00

The complainants have taken as average price of ties 70.5 cents. The price for ties as claimed in the Northern Pacific case, with a larger per cent of high-grade ties, is 67.2 cents, which is deemed fair and is accepted for this case. The State's valuation of 55.5 cents per tie is based upon prices in 1905 and does not allow for inspection and handling. The rapidly increasing price of ties since that time clearly justifies the finding here made.

Item 5, Minneapolis & St. Louis case:

Amount allowed $1,149,829.00

The ties on this road were high-grade, oak and cedar exclusively, and the price claimed for same, respectively, 75 cents for oak and 65 cents for cedar, is accepted, being the same as allowed in the Northern Pacific case for such quality of ties. The State found a shortage of 32,000 ties in the number claimed and a deduction is made therefor at 70 cents per tie, it not appearing of what kind the deficiency consisted.

Item 6, Ballast:

Northern Pacific case: Amount allowed.....$1,960,969.00

This amount is found by taking the same unit price as in the Great Northern case of 62 cents per yard.

Item 6, Great Northern case:

Amount allowed $3,861,360.00

The main difference between the parties is unit prices. A careful analysis of the testimony justifies the prices and quantities claimed by complainants of 62 cents per yard. The State clearly overlooked items of expense in a very considerable amount in the unit
268 prices of 45 cents per yard adopted by it. Other reliable testimony fixes such prices much higher than those above allowed, while complainant's chief witness, from actual measurements on the ground and records of the company, was best qualified to testify as to quantities.

Item 6, Minneapolis & St. Louis case:

Amount allowed $357,855.00

Item 7, Rails:

Northern Pacific case: Amount allowed..... $5,645,307.73

This includes handling, inspection and transportation to central points of each section under construction.

Item 7, Great Northern case:

Amount allowed $9,053,977.00

The only material difference between the parties after allowance for rails acquired after June 30, 1907, not included in the State's estimate, is in unit prices and here allowed at $30.25 per ton at St. Paul and Duluth. The State's engineer and the engineer in the Northern Pacific case fix this price at $29.75, the former as of June 30, 1907, the latter as of June 30, 1906. Having in mind the difference in time and prices paid by the company in 1908 and the matter of handling and inspection allowed indirectly if at all by the State, $30.25 seems to be a fair average price. Transportation charges to the front is claimed for and allowed in a separate item.

Item 7, Minneapolis & St. Louis case:

Amount allowed $1,540,392.00

Item 8, Track fastenings:

Northern Pacific case: Amount allowed..... $727,228.37

This is the amount claimed by complainant. If acquisition after State's estimate was made is excluded, the amount allowed is substantially less than the State was willing to concede.

Item 8, Great Northern case:

Amount allowed $2,087,615.00

The difference in the estimates of the respective parties is $171,146.28, of which $28,800 is due to acquisition after State's
269 estimate was made. The residue is due to difference in unit prices and those of complainant are accepted as they are based on actual prices paid during the current year and there is nothing in the testimony to suggest that they are improper.

Item 8, Minneapolis & St. Louis case:

Amount allowed $258,561.00

Item 9, Switches, frogs and railroad crossings:

Northern Pacific case: Amount allowed..... $303,717.80

The difference between estimates of the respective parties is not large and for the most part arises from additions made after State's estimate was made. If Items 8 and 9 are taken together there is substantial agreement between the parties.

Item 9, Great Northern case:

Amount allowed $300,519.00

The State concedes a substantially greater amount if acquisitions after State's estimate was made are added to it.

Item 9, Minneapolis & St. Louis case:

Amount allowed $66,807.00

Item 10, Track laying and surfacing:

Northern Pacific case: Amount allowed..... $1,600,591.56

In taking the amount claimed by complainant as the amount allowed the fact is not overlooked that 439.476 miles of road is allowed for at the rate of $1,050 per mile instead of $760 per mile as in the other cases. The latter figure covers only such surfacing as is necessary for ballast and construction trains. In taking the higher figure it is not contemplated that the surfacing will be immediately followed by ballasting, but that it will leave the road in condition suitable for commercial business and that it will be followed by ballasting at some later time. A similar division of work is not found in the other cases, where it seems to be assumed that surfacing will be immediately followed by ballasting to make a completed road ready for operation.

270 Item 10, Great Northern case:

Amount allowed..... $2,207,753.00

It is difficult to reconcile the wide differences between the parties in these cases with respect to this item. As a matter of fact it is of such character that there ought not to be great disparity in unit values. In this (the Great Northern case) the State's estimate is based on a cost of $500 per mile, while complainant bases on a cost of $835 per mile, with the items entering into such cost substantially the same. For so-called contract work (that is, labor of handling material and laying track,) the State allows only $275 per mile. It appears from the records of the company (Ex. 7—Hogeland) that as long ago as 1898 in the construction of 150 miles of road in Minnesota the company actually paid $359 per mile for such work—an undertaking sufficiently extensive to be a fair criterion of value. If such was the sum necessarily paid, as the books of the company show—and they are not challenged—it would have cost much more in 1908, $400 per mile being a low estimate. Again, the State allows, in the Northern Pacific case, and presumptively

the same in this, only $28.75 for surfacing while in the work referred to in 1898 the company actually paid $142 per mile for such work. This small amount allowed by the State for surfacing was upon the theory that where track laying was to be followed as soon as practicable by ballasting little surfacing would be required. The testimony shows that even in such case it is customary and more economical to do a very considerable amount of surfacing to hold the track and ties in place for ballasting and the construction work to follow. The amount so allowed by the State seems greatly inadequate. For train service the State allows only $61.30 per mile, whereas in the work of 1898 referred to the actual cost was $114 per mile. Taking the difference in time, increased cost and other matters into consideration, it would seem that the complainant's claim in the Northern Pacific case of $760 per mile is fairly
271 conservative, and is adopted as a proper basis for this item in each of the three cases. Such allowance contemplates that there will be very considerable surfacing from the sides so as to make the road sufficiently permanent and stable for the passage of ballast and construction trains in the further prosecution of the work but not in condition for commercial traffic.

Item 10, Minneapolis & St. Louis case:

Amount allowed..... $384,751.00

It appears that the company in 1906 and 1907 did work of this character in South Dakota and amounting to 250 miles at a cost of $890 per mile, of which $130 per mile was charged as material-yard expense. Such expense does not appear in the estimates in the other cases, and if in this it is deducted from the total claimed, we have $760 per mile, just the amount allowed in those cases. Whatever may have been the conditions in South Dakota appertaining to this work there done, it does not satisfactorily appear that for the road in this state such expense would be necessary.

Item 11, Bridges, trestles and culverts:

Northern Pacific case: Amount allowed..... $3,586,053.00

Allowing for construction after State's estimate was made, there remains a difference between the parties of $896,072.21. The State bases its figures, apparently, in a large measure upon the reports made of such work by a number of other important railroad lines. Its engineer made use of these reports in making up the estimate in connection with his own very considerable knowledge and experience in such matters—and such estimate is not to be ignored. It is to be observed, however, that reports of other companies not supported by evidence as to basic facts should be received with caution. Exhibit 86—Darling—discloses the difference between the parties with respect to the items of work making up the total aggregate and actual prices paid for such items in recent years, from which it appears that the unit prices so paid are considerably higher
272 than those used by the State. Upon careful review of the whole testimony it is determined to allow to complainant on

account of this item a sum equal to two-thirds of this difference; that is, State's allowance, $2,578,014, plus new work, $410,658, plus two-thirds of $896,072 equals $3,686,053.

Item 11, Great Northern case:

Amount allowed..... $6,664,729.00

Allowing for construction after State's estimate was made and omissions from it of bridges and, seemingly, also, of foundation work, the difference between the parties is $448,589.44, and is to be accounted for by difference in unit prices. The State's prices are compared with the prices returned by a number of other important railroad lines in the state and seem to have been quite largely based upon or fixed with reference to them, as appears in the Northern Pacific case. For reasons stated in that case there is allowed to complainants two-thirds of the difference on account of this item; that is, state's allowance $5,141,781 plus new work and omitted bridges and foundations $1,223,889 plus two-thirds of $448,589 equals $6,664,729.

Item 11, Minneapolis & St. Louis case:

Amount allowed..... $1,025,827.00

The difference between the parties on this item is $354,292. Except as to three overhead bridges in Minneapolis, the chief witnesses seemed to harmonize as to quantities. It was claimed by the State that the three bridges mentioned were built by the city and for this reason no allowance was made therefor. But as they apparently form a part of street highways, as the law now is, their repair and renewal as acquired must be borne by the company and the city could not have been compelled to construct them in the first instance if the law had been properly interpreted and observed. Their reproduction cost should have been allowed at the sum of $54,580. This must be offset by an error in quantities of
273 masonry found by the State's witness, amounting, at the unit prices reported by the company, to $23,000, which leaves $31,580 to be added to the State's estimate, leaving a difference of $322,712, due apparently to unit prices. For reasons stated in the other case the benefit of two-thirds thereof is given to complainants. State's estimate $799,106 plus $31,580 plus two-thirds of $322,712 equals $1,025,827.

Items 12 to 28, inclusive, and 31 to 34, inclusive:

Northern Pacific case and Great Northern case:

As to the foregoing items in each of these two cases after allowing complainants for acquisition after State's estimates were made, it appears that the total value thereof as conceded by the State exceeds the amount claimed by the complainants who in their brief assume a substantial agreement. It is determined that in the Northern Pacific case the valuation of said items in the aggregate amounts to the sum

of $20,272,398.23 and in the Great Northern case to the sum of $28,838,580. The valuations placed on each of the items making up such aggregate valuations, respectively, by the witnesses for complainants, are found to be fair and reasonable and are made part of the summary schedule to follow. As the aggregate is less than conceded by the state it cannot complain.

Minneapolis & St. Louis case:

In this case there was little difference between the parties as to the items from 12 to 26 and the differences in these and some other items were compromised and figures taken accordingly and appear in the summary to follow. These figures so taken represent the Master's judgment of the fair value of the items respectively.

Item 30, Engineering, superintendence and legal expenses:

Northern Pacific case: Amount allowed..... $2,633,946.00

This is 4½ per cent on Item- 1 to 28, same as in Great Northern case.

274 Great Northern case: Amount allowed..... $3,867,040.00

This is obtained by taking 4½ per cent on Items 1 to 28, inclusive, and is sufficient to cover general expenses, for which a separate claim is made.

Minneapolis & St. Louis case: Amount allowed. $690,364.00

For valuation of Items 31 to 34 in this case see summary to follow.

Item 36, Freight on construction:

Northern Pacific case: In this case this item has not been kept separately but is included as a part of the cost of all items requiring such service.

Great Northern case: Amount allowed..... $1,700,043.00

The evidence clearly favors the view that this item should be allowed at regular tariff rates; that it is more economical to make use of other roads as far as possible in handling material to the front and that now full tariff rates must be paid for such service rather than the conventional five mills per ton per mile which seems to have formerly obtained. As the law now is, no favors can be extended to railroad companies or reductions made in the interest of reciprocity.

Minneapolis & St. Louis case:

This and Item 37 are to be taken in connection with Item 39 and is covered by it.

Item 37, Contingencies:

Northern Pacific case: Amount allowed..... $3,710,479.00

The amount here allowed is five per cent on Items 1 to 34 and corresponds to the State's method, and in view of present knowledge—making definite many things which would in a road projected into new territory be uncertain—the amount seems ample.

Item 37, Great Northern case:

Amount allowed..... $4,367,826.00

This amount is obtained by allowing ten per cent on all
275 items into which labor enters and eliminates items a knowledge of which has been acquired by the actual construction of road. The State's method would have somewhat increased this amount.

Item 38, Stores and supplies in Minnesota:

Northern Pacific case: Amount allowed..... $2,658,976.00

Item 38, Great Northern case:

Amount allowed..... $3,240,178.00

Item 38, Minneapolis & St. Louis case:

Amount allowed..... $238,589.00

Item 39, Interest during construction:

Northern Pacific case: Amount allowed..... $7,386,215.00

This is interest at four per cent for 2½ years on Items 1 to 36.

Item 39, Great Northern case:

Amount allowed..... $17,880,150.00

This allowance is based upon four per cent on Items 1 to 36 for a period of four years, during which time it is assumed the aggregate of such items would average the amount paid out without a return. It is fair to allow interest on payments made until as the rseult of such payments revenue is derived, and this is recognized by all the authorities, as well as by the State's witnesses. This is an interest allowance, however, and is not analogous to returns based on the hazards of the business, as are rates. Returns from savings banks' accounts and the better class of bonds are less than four per cent, and under all the circumstances interest at this rate seems fairly compensatory and is what is claimed and allowed in the Northern Pacific Case.

Minneapolis & St. Louis case, Items 36, 37 and 39:

Amount allowed..... $1,834,880.00

In view of testimony, ten per cent of Items from 1 to 34, inclusive.

Item 40, interest in terminal properties:

Northern Pacific case: Amount allowed..... $2,204,342.00

276 The situation of this company with respect to the St. Paul Union Depot and Minnesota Transfer companies is identical with that of the Great Northern company, to be hereafter explained.

With respect to the Duluth Union Depot and Transfer Company, the Northern Pacific Company owns all the stock and makes use of the property of the company as its own by the operation of its line of road; it is simply an operating tool and transacts no business on its own account or otherwise than as an agent of the Northern Pacific Company, and its properties should be valued as belonging to that company.

In this case it was conceded at the close of the argument before the Master that the Big Forks and International Falls Railway and the Minnesota and International Railway had not been made to appear as part of the Northern Pacific system, and they have not been included in the valuations which have been made.

Item 40, Great Northern case:

Amount allowed..... $1,186,191.00

This is the valuation of the one-tenth interest owned by the company in the Minnesota Transfer Railway and of the one-ninth interest in the St. Paul Union Depot properties. Such ownership is not direct but is evidenced by stock in subsidiary corporations in whose name the properties are carried and operated for the sole and exclusive benefit of the respective railroad companies which own the stock and make use of the properties as an operating tool and as part of the properties of their respective lines of railroad. These companies are substantially joint owners of the property and as a matter of convenience and to more readily adjust accounts as between themselves growing out of the several use by each of them as so made of it, an agency for the purposes is created by an intermediary corporation under their direct control. To such agent each pays for

277 such use of the property and charges the amount paid in its expense account, and dividends, if any, go into the revenue account as operating expenses and revenues.

These subsidiary corporations are mere agencies operated for and wholly dependent upon the railroad companies who own the stock and in no sense are they independent enterprises engaged in business on their account. In the evidence and all the proceedings before the Master it has been by all parties assumed that such was their character, and this being so the properties thereof should be considered as property of the companies to the extent of their respective interests as represented by stock.

These terminal properties, located as they are and used for receiving and discharging passengers and for receiving, handling, transferring and forwarding freight, are of exceptional value and importance and the facilities so provided are found to be fully worth the amount claimed therefor by complainants and such amount has been taken in each of the cases.

Item 40, Minneapolis & St. Louis case:

Amount allowed..... $1,186,191.00

The interest of this company in the Minnesota Transfer and St. Paul Union Depot property is apparently the same as in the other cases and is allowed for the reasons before stated.

A claim was made in the Great Northern case for lines under construction, but the evidence fails to show why they should constitute an element of rate-making value. Until they become completed roads and are made part of the system so as to produce revenue, they should not be regarded. Upon completion it will be noted that interest during construction is allowed as an element of reproduction cost, which—when it shall become entitled to recognition—will fully cover the claim so made.

278 *Summary of Valuations of Physical Properties.*

Itemized in Each of the Three Suits.

Northern Pacific Case.

Items.	
1. Lands for right of way, yards and terminals.....	$21,024,562
2. Grading, clearing and grubbing.....	1,331,541
3. Protection work, rip-rap, retaining walls.....	374,091
4. Tunnels	253,250
5. Cross-ties and switch-ties.....	3,657,576
6. Ballast	1,960,969
7. Rails	5,645,307
8. Track fastenings	727,228
9. Switches, frogs and railroad crossings.....	303,717
10. Track laying and surfacing.....	1,600,591
11. Bridges, trestles and culverts.....	3,586,063
12. Track and bridge tools.....	28,073
13. Fences, cattleguards and signs.....	471,609
14. Stockyards and appurtenances.....	37,098
15. Water stations	436,489
16. Coal stations	120,039
17. Stations, buildings and fixtures.....	920,423
18. Miscellaneous buildings	1,054,874
19. Steam and electric power plants, gas plants.....	196,338
20. General repair shops.....	1,162,934
21. Shop machinery and tools.....	529,322
22. Engine houses, turntables and cinder pits.....	1,026,346
23. Track scales	38,520
24. Docks and wharves.....	768,306
25. Interlocking plants and 26. other signal apparatus	114,430
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27. 28. Telegraph and telephone lines.....	285,145
28½. General office furniture.....	73,654
29. Solidification of roadbed. (Absorbed in above.)	
Total 1 to 28.....	$58,728,685

30. Engineering, superintendence, legal expenses, 4½ per cent 1 to 28	$2,785,036
31. Locomotives	3,454,040
32. Passenger equipment	1,349,829
33. Freight car equipment	7,519,722
34. Miscellaneous equipment	372,477
35. Marine equipment (none).	
Total items 1 to 34	$74,209,789
36. Freight on construction material—absorbed.	
37. Contingencies, 5 per cent 1 to 34	3,710,479
38. Stores and supplies in Minnesota	2,658,976
39. Interest during construction, 4 per cent 2½ years Items 1 to 36	7,420,957
40. Interest in terminal properties, St. Paul depot, Duluth depot, Minnesota Transfer	2,204,344
	$90,204,545

Great Northern Case.

Items.	
1. Lands for right of way, yards and terminals	$25,172,650
2. Grading, clearing and grubbing	21,685,802
3. Protection work, rip-rap and retaining walls	850,069
4. Tunnels (none).	
5. Cross-ties and switch-ties	5,460,809
6. Ballast	3,861,360
7. Rails	9,053,977

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8. Track fastenings	2,087,615
9. Switches, frogs and railroad crossings	300,519
10. Track laying and surfacing	2,207,753
11. Bridges, trestles and culverts	6,664,729
12. Track and bridge tools	54,450
13. Fences, cattleguards and signs	448,864
14. Stockyards and appurtenances	81,600
15. Water stations	569,900
16. Coal stations	202,200
17. Station buildings and fixtures	1,561,200
18. Miscellaneous buildings	1,446,445
19. Steam and electric power plants and gas plants	413,752
20. General repair shops	1,070,765
21. Shop machinery and tools	953,531
22. Engine houses, turntables and cinder pits	727,100
23. Track scales	39,700
24. Docks and wharves	37,500
25. Interlocking plants	193,268
26. Signal apparatus	116,046
27. Telegraph lines and appurtenances	634,744
28. Telephone lines and appurtenances	37,893
29. Solidification of roadbed (Absorbed in above).	
Total 1 to 28	$85,934,241

30. Engineering, superintendence, legal expenses, 4½ per cent 1 to 28	$3,867,040
31. Locomotives	5,469,270
32. Passenger equipment	1,886,178
33. Freight car equipment	12,411,265
34. Miscellaneous equipment	482,909
35. Marine equipment (none).	
Total 1 to 34	$110,050,903

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36. Freight on construction material	1,700,043
	$111,750,946
37. Contingencies	4,367,826
38. Stores and supplies in Minnesota	3,240,178
39. Interest during construction (4 per cent four years 1 to 36)	17,880,150
40 Interest in terminal properties	1,186,191
	$138,425,291

Minneapolis & St. Louis Case.

Items.	
1. Lands for right of way, yards and terminals	$5,999,397
2. Grading, clearing and grubbing	2,551,960
3. Protection work, rip-rap, retaining walls	52,240
4. Tunnels (none).	
5. Cross-ties and switch-ties	1,149,829
6. Ballast	357,855
7. Rails	1,540,392
8. Track fastenings	258,561
9. Switches, frogs and railroad crossings	66,807
10. Tracklaying and surfacing	384,751
11. Bridges, trestles and culverts	1,025,827
12. Track and bridge tools	27,791
13. Fences, cattleguards and signs	141,606
14. Stockyards and appurtenances	55,704
15. Water stations	80,637
16. Coal stations	25,682
17. Station buildings and fixtures	239,434
18. Miscellaneous buildings	32,901
19. Steam, electric power and gas plants	58,050
20. General repair shops	180,588
21. Shop machinery and tools	101,875

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22. Engine houses, turntables and cinder pits	148,303
23. Track scales	8,421
24. Docks and wharves (none).	
25. Interlocking plants	15,674

26. Signal apparatus	2,594
27. Telegraph lines and appurtenances	27,109
28. Telephone lines and appurtenances (none).	
29. Solidification of roadbed (Absorbed in above).	
Total items 1 to 28	$14,533,988
30. Engineering, superintendence and legal expenses 4¾ per cent 1 to 28	$690,364
31. Locomotives	698,163
32. Passenger equipment	341,006
33. Freight car equipment	1,998,345
34. Miscellaneous equipment	86,938
35. Marine equipment (none).	
Total Items 1 to 34	$18,348,804
36. (Included in Item 39.)	
37. (Included in Item 39.)	
38. Stores and supplies	238,589
39. Freight on construction material, contingencies, interest during con-truction	1,834,880
40. Interest in terminal properties	1,186,191
	$21,608,464

VIII.

Depreciation.

Having thus found the cost of reproduction new of these several railroads properties, the question remains what if anything shall be deducted for depreciation.

It is established that the roadbed is constantly increasing
283 in value. It becomes solidified, embankments and slopes of excavations become settled and stable and so the better resist effects of rains and frost. It becomes adjusted to surface drainage and the adjustment is made permanent by concrete structures and rip-rap, and in other ways a roadbed long in use is far more valuable than one newly constructed On the other hand, everything on and above the roadbed depreciates from wear and weather-stress. The life of a tie is from eight to ten years only. Structures become antiquated, inadequate and more or less dilapidated. Ballast requires renewal, tools and machinery wear out, cars, locomotives and equipment, as time goes on, are worn out or discarded for newer types. A large part of the depreciation, however, is taken care of by constant repairs, renewals, additions and replacements, a sufficient sum being annually set aside and devoted to this purpose, so that this, with application of roadbed and adaptation to the needs of the country and of the public served, together with working capital hereinafter mentioned fully offsets all depreciation and renders the physical properties of the road not less valuable than their cost of reproduction

new. This conclusion is fully supported by the evidence and also justifies the language hereinbefore cited from the Missouri, Kansas & Texas Railway case, decided by Mr. Justice Hook.

There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies. No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making.

In view of all the foregoing considerations it follows without question that there should be no deductions on account of depreciation.

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IX.

Stocks and Bonds as Affecting Value.

There was produced before the Master reliable evidence as to the average market value of the stocks and bonds issued by the Northern Pacific Company for a period of five years ending April 30, 1908, and then outstanding, such average value amounting in the aggregate to the sum of $509,824,723. (Exhibit 17—Gray.) The par value April 30, 1908, of the stock was $215,539,634.99 and of the bonds, $190,256,577.66. Total $405,796,392.65. (Exhibit 14—Gray.)

The total track mileage claimed by Complainant's Exhibit 2—Darling—is 8,146.45 miles. From this must be deducted 150.65 miles for the Minnesota and International line and Big Forks & International Falls line, improperly included, and also lines in Manitoba under lease and not operated as part of the system, amounting approximately to 300 miles, the exact amount not being definitely shown by the evidence. This leaves 7,695.80 miles. The track mileage in Minnesota is 1,625.20 or substantially 21 per cent of the whole. Taking this per cent of the stock and bond average market valuation for said five year period gives $107,063,191, which considerably exceeds the cost of reproduction new, but it must be noted that the value of stock is based on all the assets of the company and is not limited to value of property to public service, and its balance-sheet for the whole system of April 30, 1908 (Exhibit CC—Gray), shows a clear surplus $52,900,073, while some of its assets, notably the Northwestern Improvement Company stock, is apparently of far greater value than as listed. Assets and property not devoted to public service have not been valued, and as they are a large element in stock valuation it follows that value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property or as a basis rate-making.

285 In the Great Northern case, the average market value of stocks and bonds for five years ending June 30, 1908, was shown to be $452,363,804. (Exhibit 67—Drew), par value

$263,078,242.42 of average amount outstanding. The mileage in Minnesota is about 32.59 per cent of the total mileage, so that of this stock and bond average market valuation for said five year period the amount to be assigned to Minnesota on a track-mileage basis would be $147,425,363. Of this amount a very considerable sum must be predicated on property not devoted to the public service, thus reducing the proportion assignable to Minnesota mileage.

At time suit was brought in the Great Northern Case the par value of stock was $149,577,500 and of bonds was $83,119,939. June 30th, 1908, par value of stock was $209,962,750 and of bonds was $97,955,939.39; total $307,918,689.39. (Ex. 54—Parker.)

In the Minneapolis & St. Louis case, the par value of stocks and bonds in 1908 was shown to be $30,011,800. The market value of stocks and bonds in 1908 was shown to be $22,006,197, (Exhibit- 6 and 7—Scott), which, apportioned on basis of mileage owned by the company, of which about sixty per cent is in Minnesota, gives a valuation assignable to the State of $13,203,718, or about one-fifth less than the value of property as conceded by the State within Minnesota and thirty per cent less than its value as found by the Master on the reproduction basis.

Stock valuations are subject to great fluctuation from causes wholly foreign to the intrinsic values of properties to be taken as a basis of rate-making and have little commercial stability. It is impossible to determine with any degree of certainty the particular elements which from time to time cause such fluctuations and determine the market value of such stocks and to separate the same from the value of properties devoted to public use and decide what proportions thereof shall be assigned to each. Prof. Henry C. Adams, statistician of the Interstate Commerce Commission, has this
286 to say in respect to stock valuations:

"This is no place to enter upon a discussion of the nature and classification of different kinds of value, but a word of caution may be allowed in order to guard against an unwarranted use of the figures here submitted. The commercial valuation of railroad property, in so far as it depends on income arising from the sale of transportation, is the result, among other things, of an established schedule of freight and passenger rates, from which it follows that such a valuation cannot be used for determining the reasonableness or unreasonableness of the rates in question. The solution of the rate problem demands a separate valuation of the physical property."

Valuation of properties for purpose of taxation would include all the properties of the corporation whether devoted to the public service or not, and in such case the market value of stocks and bonds issued by it would be an important element of value.

X.

Original Cost of Construction.

In the Northern Pacific, the Great Northern and Minneapolis & St. Louis cases a large amount of evidence was produced before the Master for the purpose of showing actual cost of construction of the

entire railroad systems from the organization of the original companies and by them and by their successors, the present companies, down to April 30, 1908. This could be shown only by the books and records of the two companies, the Northern Pacific and Great Northern, and in the early history of the original companies these are somewhat obscure and uncertain and, by reason of lapse of time, cannot be verified by other proof.

The investment cost, in the Northern Pacific case, amounts to the sum of $369,252,755. In this aggregate is included an item
287 of interest during construction amounting to $4,534,882, which is a proper credit, for reasons before stated.

There is also included items aggregating $24,709,164 for discounts made and commissions paid in disposing of its bonds. This, of course, was a necessary and proper expense of the company, and if required to render an accounting it would be entitled to take credit therefor, just as it would be allowed in an accounting demanded with respect to any other business in which any corporation or private person might be engaged. It cannot be said, however, that it is money which has actually gone into the road, but rather an expense which the company incurs for the purpose of procuring such money. If rate-making is to be based upon actual cost, it would seem that such cost must be measured by the money necessarily expended in producing the construction without regard to whether those undertaking the enterprise have the same or must borrow for the purpose—a matter in which the public has no concern. If allowed interest during construction on the money invested, more should not be asked; otherwise, the rate would be directly affected by the good credit or otherwise of those undertaking the work. It seems that formerly and down to 1907 the Interstate Commerce Commission permitted a credit for this item of discount but now disallow it.

The total investment of $369,252,755 above mentioned also includes an item of $32,573,036, the basis of which is an item found in an old ledger and noted in Exhibit 28—Gray as "Claims of old stockholders recognized in reorganization representing net cost in issue of new stock less proceeds of lands, $32,573,036.16," and for which stock was issued and credit taken therefor. It seems probable that this stock was issued without consideration, and the fact that it was never included in the annual reports to the State, as shown in Exhibit V, tends to discredit it, and as there is no supporting
288 evidence it should be disallowed. With these deductions, the cost of construction account is reduced to $312,243,555.

The Minnesota track mileage, as before stated, is substantially 21 per cent of the track mileage of the whole system and if the above cost were proportioned accordingly the amount assignable to the State is 21 per cent of $312,243,555. or a total sum of $65,571,462. This is considerably less than the valuation of the physical properties as found and makes no allowance for appreciation of property incident to the growth or prosperity of the country in which the company is entitled to share.

In the Great Northern case, the balance-sheet of the company of date June 30, 1908, shows the book valuation of property for the

entire system devoted to the public service to amount to the sum of $319,681,815.

Upon production of their books and examination made thereof by the State's accountants this amount seems to be reduced to the sum of $295,401,213 by reason of disallowance of the following items: First, when in 1879 this company's immediate predecessor, the St. Paul, Minneapolis & Manitoba Railway Company, took over the properties from the latter's predecessor, the St. Paul & Pacific Railroad Company, it seems to have arbitrarily increased the book valuation by $12,126,342. Not unlikely this includes cost of reorganization, taking over from the receiver a bankrupt road and putting it on its feet again under able and efficient management, but for such purpose the amount seems excessive. It may also include enhanced value attaching to property as a going concern under such management. There is no evidence in explanation.

Second, discount on sale of bonds, disallowed for reasons before stated, $4,794,867.

Third, difference between cost to the company of the stock of the Willmar & Sioux Falls Railway Company and its par value of $1,500,000, it being included at the latter sum in its investment account, $831,275.

289 Fourth, actual cost of construction of the Willmar & Sioux Falls railroad was less than as included in investment account by $55,950.

Fifth, in the matter of the Eastern Railroad of Minnesota the book valuation or cost exceeds the actual cost of acquisition of Superior terminals and stock of Lake Superior, Terminal & Transit Company and of acquisition of the Duluth, Mississippi & Northern Railroad in the sum of $4,961,426.

Sixth, the book valuation or cost of stock of Duluth, Watertown & Pacific railroad exceeds the actual cost to the company in the sum of $724,161.

Seventh, the excess of book value over actual cost of Wadena & Park Rapids line, the Alton & Halstead line and the Red Lake Falls line amounts to $286,581.

Eighth, book valuation of Minneapolis Union Railway line when taken over was arbitrarily increased in the sum of $500,000.

Total book valuation, as before stated, $319,681,815; total of deductions as above, $24,280,602; balance, $295,401,213.

In explanation of some of the foregoing deductions it is to be kept in mind that as to acquired roads the question is not what it cost the company to take them over but what money has actually gone into their construction.

The total track mileage of the road's entire system is 8,528.98 miles, and of the part in Minnesota 2,779.30 miles, so that practically 32.59 per cent is in this state, and taking this per cent of $295,401,213 we have $96,271,255 as the book value of what has actually been expended in construction and equipment of the road in Minnesota. Of course division on a mileage basis is for the most part arbitrary and unreliable.

In the Minneapolis & St. Louis case, the book cost of property and investments amounted to $30,572,619. Deducting for discounts

disallowed for reasons before stated leaves a remainder of $28,574,225. Dividing this on a mileage basis 59.94 per cent, assigns
290 to Minnesota $17,127,390, and apportioned on a gross revenue basis over the entire system, 77.41 per cent assigns to Minnesota $22,119,307.

For reasons before stated, rates are not to be predicated on original investment. Prof. B. H. Meyer, of the Wisconsin University, an eminent railroad statistician who has given the matter very careful consideration, as appears from the so-called Wisconsin Buel rate case, in which he wrote the decision of the commission, says:

"Bearing in mind, however, that this is a commercial valuation, it is impossible to advance a single valid argument in favor of the acceptance of cost accounts as the equivalents of values. It would be nearer the truth to say that costs of railway properties have nothing to do with their values than to assert that the values of railway properties are identical with costs."

And again,

"The method which satisfies in the highest degree the requirements of the valuation of railway systems as a whole as well as the distribution of the total values of such systems among states is the inventory method. This is a composite method, each constituent element in which is designed to solve one phase of the general problem of valuation and value distribution. The basal principle of the method is an engineer's estimate of the cost of reproduction of all physical properties new and in present condition, the latter being usually expressed in terms of per cent of the former."

Again he has said,

"The cost-of-reproduction method carries with it a greater degree of demonstratable certainty and conviction than all the others which have been proposed."

And again,

"Value of a railroad property, ascertained by the stock-and-bond method alone, cannot be used with fairness to carriers in cases involving important reductions in their rates."

291 The Minnesota Railroad & Warehouse Commission in its report to the legislature which resulted in authority to incur the expense necessary to obtain the inventory appraisement made by it sets out very forcibly the value of such appraisement as an element of rate-making. It says:

"It is uniformly held that the cost of reproduction is one of the very important elements in determining what is a reasonable rate and certainly is the strongest kind of evidence of the fair value of the property. The Commission has always recognized the carrier's right to earn a reasonable return on a fair valuation of its property, and has always had this in mind in every rate adjustment it has made. The valuation will be of great value in sustaining the Commission and the legislature in pending legislation should the contention be made that the rates in controversy will not produce a fair return on the property used, and it can be used in any further readjustment of rates that the Commission may deem it advisable or necessary to make."

The Master is thus confirmed in his opinion that the cost of reproduction new is the fairest and most equitable basis upon which to predicate rates, both for the carrier and the public, and he has accordingly adopted it in these cases.

Good will and corporate franchises are not proper elements of such valuation. Patronage and good will of the public are its contributions to the success of the enterprise, for which it is not to be assessed. Corporate franchises are the free gift of the government conferred upon any organization willing to embark in such undertaking, but knowledge derived from experience, adaptation to the needs of the public and readiness to serve, together with physical appreciation of roadbed and a reasonable amount of working capital always on hand for immediate use, are matters of value which will fully offset depreciation arising from use and weather-stress.

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XI.

Roads Constructed and Maintained Pursuant to Public Demand.

It is true of these lines of railway that they are efficiently, economically and honestly managed; that they have been located and constructed pursuant to a public demand and that the public rather than dispense with the service of any of them can well afford and will gladly pay such rates as will produce a full and fair return on cost of their reproduction—such return as others engaged in business of similar character and of like hazards and uncertainties are accustomed to receive, and rates sufficiently high for such purpose would not be burdensome, unjust or unreasonable.

Abandonment of either of these roads would be a great public calamity, and if we could conceive of their being suddenly obliterated, their immediate reconstruction would follow in response to the public necessity, which shows that they must be worth what it would cost to reproduce them and that a return based on such cost will not be oppressive.

It is to be observed, however, that there is a marked difference in some respects between the location and surrounding conditions of the Northern Pacific and Great Northern roads, on the one hand, and the Minneapolis & St. Louis road, on the other. The former lines extend from the Head of the Lakes at Duluth and Superior and from the great commercial cities of St. Paul and Minneapolis to important seaboard cities on the Pacific coast and throughout their length, both within and beyond the state of Minnesota, connect with other important lines of railroad and exchange traffic therewith in large volume, and also have many and important branch lines reaching out into productive agricultural lands which operate as feeders and largely increase the business of the main lines. Their terminals at the Head of the Great Lakes and at the Pacific coast bring
293 about the exchange of a large tonnage with vessels navigating those waters, both domestic and foreign, and add largely to the volume of business.

The Minneapolis & St. Louis road, on the other hand, however, is so located that it cannot participate in these advantages and must

largely depend on local and inland traffic for its business. It runs south from the inland cities of St. Paul and Minneapolis to Des Moines, with a branch to Storm Lake, Iowa, and a branch to the South Dakota grain fields. Along its entire line it comes in sharp competition with strong intersecting railroad lines, and, while as before stated, it subserves a useful public purpose and is operated in response to public demand, it can be maintained only by the exercise of the highest economy and watchfulness in its operation and to succeed must be given greater latitude than is necessary with respect to the more favorably located and prosperous lines of railway. Necessarily, to get business its rates must conform to those existing on other roads wherever competition is an element, but when this does not exist it is entitled to rates not so controlled by competition, and within reasonable limits must, to exist, be given a free hand in the conduct of its business, as will later be made to appear when the consideration of rates is reached.

XII.

Economy of Management.

It has been urged before the Master with reference to the lines of railway under consideration that the evidence discloses want of economical management in that limited portions of the business were unremunerative and not infrequently resulted in loss.

If the convenience and demands of the public were disregarded, greater economy could doubtless be exercised. Full cars and long trains at fewer intervals would be a great saving of cost, and
294 to this end produce could be stored in elevators awaiting shipment under the most economical conditions. Needless to say that this would result in great public inconvenience and dissatisfaction, and recourse to such methods is unthinkable. The carrier must properly yield to public demand and recoup for loss on other portions of its business.

It is also urged that as to some of the roads surplus lands and equipment are disclosed much beyond present needs. But it is good business sense to anticipate and prepare for the requirements of the near future. Readiness to serve is of the highest importance to those requiring service and an efficient management will, if practicable, take advantage of the markets and buy what will soon be needed when it can be obtained at a reasonable price and not wait until it must be had regardless of cost. Present patrons are not to be burdened for the benefit of those to be acquired in the distant future, but they can well afford to pay a somewhat higher rate that they themselves in the near future may enjoy a cheaper and better service. It is proper for the carrier not only to provide itself with ample facilities for the efficient conduct of its present business, but also to anticipate demands soon to be made as the country becomes more prosperous, and it is entitled to revenue sufficient for such purpose.

Having these considerations in mind, it does not appear that the service rendered or the property acquired and held for present and

prospective needs are unreasonable or excessive or that any property has been improperly included as a basis of cost of reproduction for rate-making purposes.

XIII.

Valuations of Entire System.

Complainants have offered considerable testimony for the purpose of establishing value of the physical properties of the whole system, both in the Northern Pacific and Great Northern cases, and they ask a finding of such valuation.

295 The State has confined its testimony as to value of such physical properties only as are in Minnesota. The Master does not consider a finding in the matter at all necessary in determining the controversies submitted to him, but as such finding is desired by complainants he concludes to make it.

In the Northern Pacific case there was testimony to the effect that the cost of reproduction of the physical properties of the entire system would amount to the sum of $526,779,016. This includes $28,913,981 for the Spokane, Portland & Seattle road, one-half of which is owned by the Northern Pacific Company and one-half by the Great Northern Company, the amount so taken being one-half of such cost. This road was, at the time evidence was submitted, under construction, did no commercial business, earned no revenue, and until completion could form no part of the operating system. When completed its cost of reproduction will be enhanced by interest during construction and until then it forms no part of rate-making valuation. It is not included in the track mileage of the system hereinbefore found to amount to 7,695.80 miles.

There is also included in complainants' estimate the further sum of $4,116,874 for the Minnesota and International and the Big Forks and International roads which, for reasons before given, must be deducted.

There has also been so included the further sum of $7,000,000 for lines in Manitoba which are under leases and form no part of the company's operating system.

Eliminating these items leaves a balance of $486,738,161.

Assuming, as we may, that there should be at least the same per cent reduction for the whole system as it has been found necessary to make in Minnesota (which after deducting as here for the Minnesota & International and the Big Forks & International Falls lines was substantially seven per cent), the valuation amounts to $452,666,489, and upon the testimony produced the cost of reproduction is found to amount to this sum.

296 In the Great Northern case, there was testimony to the effect that cost of reproduction for the entire system would amount to $549,253,317. Deducting for its interest in the Spokane, Portland & Seattle line $21,827,521 and for lines under construction $8,219,581 leaves a balance of $519,206,215.

Assuming, as in the Northern Pacific case, that there should be the same per cent of reduction for the whole system as it has been necessary to make in Minnesota, and which is substantially 12 per cent, the

valuation amounts to the sum of $457,121,469, and upon the testimony before the Master the cost of reproduction of the whole system is found to amount to this sum.

XIV.

Division of Property Valuation Between Freight and Passenger Business, State and Interstate.

A common use in general is made of the property devoted to the public service for both the freight and passenger business, both state and interstate, respectively, and in making a statement with reference to each class so as to determine revenue with respect to cost, there must be a division of property valuation on some fair basis and an assignment to each of its proper proportion, so that each may carry its proper share of property expense.

It is inequitable that the traveling public, largely on pleasure bent, should cast any part of the expense it incurs on the freight business which has to do almost altogether with traffic in which the public as a whole is directly interested.

On the other hand, it has never been claimed that the latter should be relieved at the expense of the former, and the cases all recognize the propriety of separation upon an equal basis as near as may be.

297 Furthermore, to determine what net revenue is derived from intrastate business and the per cent of return upon property used in that class of business, it becomes necessary to make a subdivision of property values and determine what part thereof should be assigned to state and to interstate business, respectively. The revenues from each class of business within and properly assignable to the state are known and the amount thereof and the separation as between states accepted by both parties and are practically free from estimated approximations.

Of course, any division of property value between the two classes of business, freight and passenger, must be an approximation, but one made on the relation of gross revenue derived from each kind of business has been uniformly accepted as the fairest, all things considered, in all rate cases heretofore judicially determined. While a division of property valuation on the relation of cost has been suggested by defendants, it was practically conceded to be as open to criticism as that made on the basis of revenue. Relative cost as hereafter found is at best a rough and unsatisfactory approximation, necessarily inaccurate, and should not be accepted as a divisional basis if it can be avoided. The revenue basis is not ideal, but it has an element of certainty possessed by no other and is not more objectionable in other respects.

There is no controversy between the parties in the Northern Pacific and the Minneapolis & St. Louis cases as to the total revenue and the part thereof assignable to state and interstate business respectively. In the Great Northern case there is some difference in this respect between the parties, bt if the claim of defendants was allowed, it would not in any manner alter the judgment herein recommended to be entered.

A division of total value between freight business and passenger business, state and interstate, on the gross earnings basis in each of the three cases may be stated as follows:

298 Northern Pacific Case.

Division of Total Value Between Freight Business and Passenger Business on Gross Earnings Basis.

The total value of the property of the Northern Pacific Company, used in the fiscal year ending June 30, 1908, in the conduct of its transportation business in Minnesota, was $90,204,545.

Such total value may justly and fairly be apportioned between freight business and passenger business on the basis of gross earnings,—that is, assign to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both.

Total gross earnings from freight business and passenger business, including miscellaneous earnings of each, was in said year $13,336,046.87.

Gross earnings freight business, including miscellaneous (consisting of switching, demurrage, storage, etc.) $9,823,508.35 equals 73.661 per cent of total.

Gross earnings passenger business, including miscellaneous (consisting of mail, express, excess baggage, etc.) $3,512,538.52 equals 26.339 per cent of total.

73.661 per cent of total value ($90,204,545) assigns $66,445,570 to the freight business, and 26.339 per cent of total value assigns $23,758,975 to the passenger business.

Division of Value Apportioned to Freight Business, Between Intrastate Business and Interstate Business on Gross Earnings Basis.

The total freight earnings, including miscellaneous, in Minnesota for the fiscal year ending June 30, 1908, amounted to $9,823,508.35, of which $1,606,771.26, or 16.356 per cent thereof, was intrastate, and $8,216,737.09, or 83.644 per cent, was interstate.

299 16.356 per cent of total value apportioned to freight business ($66,445,570) assigns $10,867,837 to the intrastate freight business, and 83.644 per cent of such total value apportioned to the freight business assigns $55,577,733 to the interstate freight business.

Division of Value Apportioned to Passenger Business Between Intrastate Business and Interstate Business.

The total gross passenger earnings, including miscellaneous, in Minnesota for the fiscal year ending June 30, 1908, amounted to $3,512,538.52, of which $1,206,333.09, or 34.344 per cent thereof, was intrastate and $2,306,205.43, or 65.656 per cent thereof, was interstate.

34.344 per cent of the total value apportioned to the passenger business ($23,758,975) assigns $8,159,782 to the intrastate passenger business, and 65.656 per cent of such total amount apportioned to the passenger business assigns $15,599,193 to the interstate passenger business.

Summary of Apportionment of Total Value to the Different Classes of Business in Minnesota.

Total value of property used in transportation business in Minnesota, for the fiscal year ending June 30, 1908		$90,204,545
Total value apportioned to freight business, 73.661 per cent, or	$66,445,570	
Total value apportioned to passenger business, 26.339 per cent, or	23,758,975	
Total (Equals 100 per cent.)		$90,204,545

300 Assign to intrastate freight business 16.356 per cent of total value apportioned to freight business		$10,867,837
Assign to interstate freight business 83.644 per cent of total value apportioned to freight business		55,577,733
Assign to intrastate passenger business in Minnesota 34.344 per cent of the total value assigned to passenger business		8,159,782
Assign to interstate passenger business in Minnesota 65.656 per cent of total value assigned to passenger business in Minnesota		15,599,193
Total		$90,204,545

Great Northern Case.

Division of Total Value Between Freight Business and Passenger Business on Gross Earnings Basis.

The total value of the property of the Great Northern Company used in the fiscal year ending June 30, 1908, in the conduct of its transportation business in Minnesota, was $138,425,291.

Such total value may be justly and fairly apportioned between freight and passenger business on the basis of gross earnings—that is, assign to each such percentage of total value as the amount of gross earnings of each bears to the total gross earnings of both.

Total gross earnings from freight business and passenger business, including miscellaneous earnings of each, was in said year	$20,275,907.75
Gross earnings, freight business, including miscellaneous (consisting of switching, demurrage, storage, etc.) (Equals 78.6 per cent.)	15,936,998.85

301	Gross earnings passenger business, including miscellaneous (consisting of mail, express, excess baggage, etc.)	4,338,908.90

Equals 21.4 per cent.

(See Ex. 30, Parker, 49 Martin and 53 Ward.)

78.6 per cent of total value ($138,425,291) assigns $108,802,279 to the freight business, and 21.4 per cent of total value assigns $29,623,012 to the passenger business.

Division of Value Apportioned to Freight Business Between Intrastate Business and Interstate Business on Gross Earnings Basis.

The total freight earnings including miscellaneous in Minnesota for the year ending June 30, 1908, amounted to $15,936,998.85, of which $2,408,421.43, or 15.112 per cent thereof, was intrastate, and $13,528,577.42, or 84.888 per cent thereof, was interstate.

15.112 per cent of total value apportioned to freight business ($108,802,279) assigns $16,442,200 to the intrastate freight business, and 84.888 per cent of such total value apportioned to the freight business assigns $92,360,079 to the interstate freight business.

Division of Value Apportioned to Passenger Business Between Intrastate Business and Interstate Business.

The total gross passenger earnings, including miscellaneous in Minnesota for the year ending June 30, 1908, amounted to $4,338,908.90, of which $2,086,276.68, or 48.083 per cent thereof, was intrastate, and $2,252,632.22, or 51.917 per cent thereof, was interstate.

48.083 per cent of the total value apportioned to the passenger business ($29,623,012) assigns $14,243,633 to the intrastate passenger business, and 51.917 per cent of such total amount ap-
302 portioned to the passenger business assigns $15,379,379 to the interstate passenger business.

Summary of Apportionment of Total Value to the Different Classes of Business.

Total value of property used in transportation business in Minnesota for the fiscal year ending June 30, 1908	$138,425,291
Total value apportioned to freight business 78.6 per cent or	108,802,279
Total value apportioned to passenger business, 21.4 per cent or	29,623,012
Total, 100 per cent	$138,425,291
Assign to intrastate freight business 15.112 per cent of total value apportioned to freight business	$16,442,200
Assign to interstate freight business 84.888 per cent of total value apportioned to freight business	92,360,079

Assign to intrastate passenger business in Minnesota 48,083 per cent of the total value assigned to passenger business	14,243,633
Assign to interstate passenger business in Minnesota 51.917 per cent of total value assigned to passenger business in Minnesota	15,379,379
	$138,425,291

Minneapolis & St. Louis Case.

For this case see infra XVII, p. 127, where it is considered separately.

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XV.

Reasonable Return.

Having made the foregoing distribution of property valuations, the question is, What return are the companies respectively entitled to receive thereon without legislative interference for the protection of the public?

It has been found that a full and fair return, such as is derived from investments in like kinds of business and subject to like conditions, would not compel the public served to pay an unjust or burdensome rate. It follows, therefore, that such valuation is as much an element of rate-making and is entitled to the same consideration as are the operating expenses of the company. The theory that it is entitled to some return, the amount thereof to be adjusted by the legislature regardless of property values devoted to the public service, must be rejected. Any rate which will not produce a full and fair return is unreasonable, and is confiscatory to the extent that it comes short of producing such return, and is a taking of property from the carrier class and giving it to the persons served without compensation.

What is a just return? One of the most fair-minded and intelligent witnesses before the Master; one who from his long official experience and efficient service had necessarily given the matter very careful consideration, was of the opinion that the carrier should be assured an average annual return of seven per cent on a fair valuation of its property. The Master concurs in this view. Having in mind the nature of the business, its fluctuations from year to year due to extremes of weather and varying crop conditions, the fact that operations can never be suspended, but in time of adversity as well as of prosperity the carrier must be ready to serve or forfeit its property devoted to the public service, and that competition is ever present and increasing, it would seem that the return here
304 suggested would be the minimum when compared with returns from other kinds of business not subject to such conditions. It must be remembered also that the public demands and is able and willing to pay for a service of the highest efficiency, requiring able and skillful management. The continued prosperity of the country depends upon it, and the returns from such undertakings should be sufficiently adequate to encourage the investment of ample capital for their successful prosecution.

In Wilcox v. Consolidated Gas Co., 212 U. S. 19, the question as to the reasonableness of the rates prescribed by the state of New York for the defendant company within the city of New York was before the Court for its determination. After making some general observations as to what compensation public service corporations would, under varying conditions, be entitled to receive, the Court uses the following language:

"In an investment in a gas company, such as complainant's, the risk is reduced almost to a minimum. It is a corporation, which in fact, as the court below remarks, monopolizes the gas service of the largest city in America, and is secure against competition under the circumstances in which it is placed, because it is a proposition almost unthinkable that the city of New York would, for purposes of making competition, permit the streets of the city to be again torn up in order to allow the mains of another company to be laid all through them to supply gas which the present company can adequately supply. And, so far as it is given us to look into the future, it seems as certain as anything of such a nature can be, that the demand for gas will increase, and, at the reduced price, increase to a considerable extent. An interest in such a business is as near a safe and secure investment as can be imagined with regard to any private manufacturing business, although it is recognized at the same time that there is a possible element of risk, even in such a business. The court below regarded it as the most favorably situated gas business in America, and added that all gas business is inherently sub-
305 ject to many of the vicissitudes of manufacturing. Under the circumstances, the court held that a rate which would permit a return of six per cent would be enough to avoid the charge of confiscation, and for the reason that a return of such an amount was the return ordinarily sought and obtained on investments of that degree of safety in the city of New York.

"Taking all facts into consideration, we concur with the court below on this question, and think complainant is entitled to six per cent on the fair value of its property devoted to the public use."

If a gas company under the conditions there disclosed, with an assured revenue beyond all reasonable probability of hazard, was entitled to six per cent net return on the value of its property devoted to the public use, a finding that in these cases the companies are entitled to seven per cent net return on such valuation after allowing for all necessary repairs and replacements is certainly conservative and does no injustice to the public. Few businesses are so free from hazard as that of national banks, and the evidence discloses that the average results of their business for thirty-eight years ending with 1907 show net annual earnings to capital and surplus of 8.58 per cent, and for the period from March 1, 1897, to June 30, 1907, of 9.84 per cent.

The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found.

XVI.

Net Revenue Derived from Freight and Passenger Business, Respectively.

It now becomes necessary to determine the net revenue derived from the passenger and freight business, respectivly, within the State of Minnesota, and to do so we must ascertain the cost in each
306 class. It has been hereinbefore determined what the gross revenue derived from each class of business and apportioned to the state is, and there is no substantial controversy as to the gross aggregate cost incurred in conducting both classes of business taken as a whole, nor as to the apportionment thereof to the state.

Because of the fact that there is a common use of the property in conducting each class of business, it is impossible to apportion to each with any degree of accuracy its proper proportion of cost so that neither shall be unduly burdened, and as to this matter the parties are far apart, both as to results and as to methods in obtaining them, in both the Northern Pacific and Great Northern cases.

In the two cases last above mentioned, the allocations of cost made by the companies respectively have been accepted by both parties. That is to say, each company has assigned to the passenger business all those items of cost directly incurred in conducting that class of business and not common to both classes, and has assigned to the freight business all those items of cost directly incurred in conducting that class of business and not common to both classes, which assignments are accepted by both parties, and the items thereof are called allocated items and cover about sixty per cent of all expenses. The remaining items of cost not so allocated and which are common to and are incurred in conducting both freight and passenger business, are not capable of separation and assignment to each class except upon some more or less arbitrary basis, and approximations only are attainable. Such items by both companies have, in general, been divided and assigned to passenger and to freight business, respectively, upon the relation, as to most of them, which the revenue train-miles in the one class of business bears to the revenue train-miles in the other class of business, and to the items not so divided, upon the relation which the revenue engine-miles in the one
307 class bears to the revenue engine-miles in the other, and this division and assignment has been accepted by the complainants and they have offered much testimony in support thereof in these two cases.

The division so made of such common items of cost between freight and passenger for the year ending June 30, 1908, in the Northern Pacific case is found in Ex. 79—Elliott, and the method pursued is fully explained by the assistant comptroller, Johnson, in his testimony found in Vol. 6, at pages 3249, et seq., of the printed Record in that case. A like division in the Great Northern case is found in Ex. 47—Martin, with explanations by the assistant comptroller, Martin, of the method pursued, in Vol. 2, at page 955 of the printed Record in that case. The method is the same in both cases and is the one now, and which for many years last past has been, in general

use upon all the leading railroads of the country when any attempt at such division is made, constituting, in mileage at least, about one-third of all the lines of railway in the United States. A division of this character was at one time required by the Interstate Commerce Commission, and the foregoing method was the one prescribed for the purpose. Such requirement was subsequently withdrawn and such division of cost between freight and passenger seems to have been quite generally abandoned, but many companies, for their own use and information, continue to make such division according to this method, which would seem to have been the outgrowth of practical observation and experience in the exercise of an honest judgment. When it was originally adopted, there was no apparent reason, from interest or otherwise, for unduly burdening either class of business with more than its proper share of common expense. Its use is approved and supported by the evidence of a number of witnesses having an intimate knowledge and large experience in the practical operation of railway transportation in all its details.

The method of division presented by the evidence on be-
308 half of defendants is one devised by their accountant, Mr. C. W. Hillman, and may be styled the Hillman method. There is no difference between the parties in the division of train movement items, being items from 10 to 27 in the schedule of items used by them. The difference arises with respect to the rest of the items contained in such schedule, and they are for the most part divided by Mr. Hillman, item by item, in accordance with his individual judgment and opinion as to the propriety of such division. No other witness was called in support of his method of division, nor does it appear that his experience was such in the practical operation of a railway as to specially qualify him for the work. He is certainly an able accountant and statistician, but could not be classed as a practical operating man. It seems to the Master that the weight of evidence fails to sustain his method. In the Northern Pacific case, for the fiscal year ending June 30, 1907, it results in taking something over $400,000 from the passenger and adding it to the freight expense, and in the Great Northern case, for the fiscal year ending June 30, 1908, it in like manner affects the relation of passenger to freight expense in the sum of $933,694. Manifestly no one else, proceeding along the same lines that Hillman did but exercising his own individual judgment as to what, with respect to each item, was a proper division, would have reached the same results obtained by Hillman, except as a mere coincidence. It was conceded that the method could be made to produce any result desired by the person making use of it unless every step taken by its author, varying from time to time according to conditions, were strictly followed.

If the views of the Master as to what is a reasonable rate of return, and his valuations, are accepted and approved, the Hillman method, both as to division of freight and passenger, and his methods of determining the per cent of return on state business, would not, if
309 adopted, change the decree to be entered, either in form or substance. It would, however, make a wide spread between the per cent of return from each class of business, so wide as to itself suggest that the division made by him was an improper one,

greatly favoring, as it does, the net revenue from passenger business. The Master determines that the method of division of common cost between the freight and passenger business made by the Northern Pacific Company and the Great Northern Company with respect to the traffic on their respective roads most nearly approximates an accurate result, and the same is adopted for the purpose of division in the Northern Pacific and Great Northern cases.

In the Minneapolis & St. Louis case a division of cost between freight and passenger business was made by the company upon a combination of train, car and engine-mileage, with results so close to those produced by the Hillman method that they were accepted by the defendants.

The results of divisions of cost between freight and passenger and resulting net revenue in this case will appear later in this report.

XVII.

Net Return from Intrastate Passenger and Freight Business on Property Valuations Assigned to Each Respectively.

Northern Pacific Case.

Great Northern Case.

In the two cases mentioned in the caption of this subdivision we now have the following definitely ascertained elements for determining net return in the two classes of business, viz.:

1st. Gross revenue from state and interstate business, both freight and passenger, respectively, separately stated;

2nd. Relation of revenue per ton per mile and per passenger per mile, respectively, state to interstate;

310 3rd. Gross cost of operation, covering and being an aggregation of cost of state and interstate business, freight and passenger;

4th. The division of cost between the freight and passenger business as herein found and determined.

The element not certainly known and which must be ascertained and determined from the evidence is the relation of cost, state to interstate, in each class of business, freight and passenger. This found as to passenger-miles and ton-miles respectively, and the problem of determining the net revenue from each class can be readily solved.

It is needless here to recount the difficulties this problem presents, growing out of the common use of the same property in contemporaneously conducting both state and interstate transportation. They have been often recited with much particularity in railway rate decisions and are again fully described by experienced railway officials and employés called as witnesses in these cases, and their testimony more than justifies a sug-estion made by Judge Van Devanter in response to some inquiry of counsel when orally delivering his opinion in St. Louis & C. R. Co. v. Allen, in the course of which he made use of the follow- language, viz:

"Taking as your premise that the authority of Congress is supreme and therefore in respect of interstate commerce its authority shall be

everywhere equally dominant, I am not sure but that the result would be in some instances where there is such confusion, such an interweaving, as that there could not be a separation, that there the power of Congress would be the dominant power and that the other power would not exist; not on the theory that Congress has any authority over state rates, but that since its authority over interstate commerce must reach in every part and parcel of it, Congress must say that anything that gets interwoven with it must partake
311 of the exercise of that authority. Otherwise the power of Congress, which is supreme, would not be supreme."

It is conceded by all that there is practically no difference in cost arising from the fact that a transportation is across a state line and not wholly within the state, and there is no dispute but that a substantial difference exists in the cost of doing the short-haul and the long-haul business. This is clearly evidenced, in the freight business, by all rate tariffs, including the schedules of rates prescribed by the Commission's orders and the Commodity Rate Act which gave rise to these suits. The orders covering merchandise rates make the hauling charge for the first two hundred miles twice as large as for the second two hundred miles, and four times as large as for distances beyond the four-hundred-mile point, and a similar relation exists in the legislative commodity rates. There is, of course, some state traffic having a reasonably long haul and some interstate traffic having a short haul, but by far the greater volume of state business belongs to the more expensive short-haul class, and in the interstate business by far the greater part thereof belongs to the less expensive long-haul class. This is established by the fact that in the Northern Pacific case, for the year ending June 30, 1908, as the evidence shows, there were 960,709,494 ton-miles of interstate traffic touching Minnesota, with an average haul of 485.3 miles as against 130,580,988 ton-miles of state traffic with an average haul of only 104.52 miles. (Ex. 80—Elliott.)

In the Great Northern case, for the year ending June 30, 1908, the evidence shows 1,952,426,967 ton-miles of interstate traffic touching Minnesota, with an average haul of 411.8 miles, as against 171,317,766 ton-miles of state traffic with an average haul of only 113.3 miles. (Ex. 53—Ward.) State traffic is always burdened with the expense of two terminals within the state, whereas interstate traffic very general is charged with the expense of but one terminal, and as to overhead or transstate shipments in carload lots, as is a
312 very considerable part of the business, no such expense is incurred beyond the comparatively small yard expense in the making up and handling of through trains.

Doubtless the most marked difference in transportation cost depends upon whether the freight handled is through or local with respect to the several operating divisions of the line. That is, freight hauled over less than one division on local or peddling trains, as they are called, is known as local freight, and freight hauled over one or more divisions on through trains is known as through freight on such divisions, and this without reference to whether it is state or interstate traffic. A divisional distance consists, in general, of from about

110 to 150 miles, the same constituting an engine-run. There is, of course, some intrastate traffic which moves on through trains, but the greater part thereof is local freight. There is also a considerable amount of interstate traffic which moves on local trains, but by far the greater part thereof is through freight, as is shown by the long average haul. It is also true that local trains often carry through freight and through trains carry local freight in order to secure the most efficient and economical operation.

In view of these and all other conditions attending transportation, as disclosed by the evidence, entering into the question of relative expense, it becomes a difficult matter to determine with any degree of certainty the relation of cost per ton per mile in transporting state and interstate freight respectively, the expense of which is practically all common to both and not subject to allocation. The complainants have produced as witnesses before the Master a very considerable number of able and competent operating men, intimately acquainted with and having a wide knowledge of all the details of railway transportation derived from long personal experience in conducting such business. Their testimony is to the effect that it costs from three to seven times as much per ton per mile to do the intrastate
313 freight business as to do the interstate freight business, and that it costs from twenty-five to fifty per cent per passenger per mile more to do the state passenger business than to do the interstate passenger business. The defendants concede that there is greater cost attending the doing of state business, both passenger and freight, but insist that this increased cost is largely, if not wholly, taken up by the increased revenue per ton and per passenger per mile derived from the state traffic. Their chief reliance is upon the evidence of their expert accountant Mr. Hillman, before mentioned, by the use of whose method, similar in many respects to that devised by him for dividing common items of cost between freight and passenger, in connection with his testimony in support of such method they have endeavored to establish their claim. The tables presented by him as a basis of his testimony are for most items of cost the result of his own personal judgment and opinion, and as to some of them upon which his results are predicated there have been certain material assumptions not justified by the conditions found to exist. Here, too, it is conceded that any material difference of opinion as to division—as there would most likely be with regard to some, if not many, of the items—would effect very substantially different results. Another matter tending to discredit the Hillman method is the wide spread in operating per cent between state and interstate business of some of the companies and the low operating per cent as to state business on some lines as compared with that on others and as compared with the operating per cent generally found to exist on all lines of all business done in the country. Operating per cent is the per cent of gross revenue absorbed by cost of operation, and if we may take the statement of counsel in one of the briefs for defendants, (and it would seem to be a matter as to which the Court might take judicial notice) such operating expense is about 60 per cent of gross revenue generally throughout the country. By

314 the Hillman method percentages of operating expense to revenue after deducting estimated losses from the prescribed rates in the three cases are found to be as follows:

Intrastate passenger, N. P. 58.89; G. N. 67; M. & St. L. 62.54.
Interstate passenger, N. P. 51.69; G. N. 59.2; M. & St. L. 63.67.
Intrastate freight, N. P. 55.21; G. N. 41.51; M. & St. L. 48.19.
Interstate freight, N. P. 54.47; G. N. 60.58; M. & St. L. 85.03.

In the St. Louis case, in the intrastate business, without deducting for estimated loss, the operating expense would have been only 41.9 per cent of intrastate revenue, and in the Great Northern case such operating expense would have been only 39.9 per cent of intrastate revenue. There seems to be no substantial reason for the difference here found to exist on the Northern Pacific when compared with the Great Northern line, and the marked and necessarily conceded difference in density of traffic over these liens and that over the Minneapolis & St. Louis line, the former greatly exceeding the latter, would be expected to produce very different results than those shown by this table of comparisons. The wide disparities and unusual results from comparisons are not adequately explained, and they strongly suggest an improper method of division between the two classes of business.

The Master finds from the weight of testimony that the cost per ton-mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one. He also finds from the evidence that the cost per passenger-mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota.

As a result of the foregoing findings of fact we are now in possession of all the elements for a finding of net revenue derived from the doing of intrastate freight business and intrastate passen-
315 ger business, respectively, and they may be stated as follows for each of the three cases:

Northern Pacific Case.

Net Revenue Derived from Freight Business and Passenger Business Respectively.

Gross Earnings.

The total gross earnings of the Company from all sources, involving any use of the property above valued, within the state of Minnesota for the fiscal year ending June 30, 1908, was $13,682,-983.27. (Complainants' Exhibit 80 B—Elliott, treating rentals as a "net" item of $259,196.65).

The above total amount is made up as follows:

Freight revenue (transportation)	$9,509,077.33
Miscellaneous freight earnings derived from switching, demurrage, storage, etc.	314,431.02
Total freight earnings, including miscellaneous	$9,823,508.35

Total passenger revenue (transportation of persons)	$2,955,868.51
Miscellaneous pas-enger earnings (consisting of mail, express, etc.)	556,670.01
Total passenger earnings	$3,512,538.52
Total freight and passenger earnings	$13,336,046.87

Division Freight Earnings Between Intrastate and Interstate.

Total freight revenue, transportation:

Intrastate	$1,555,342.92 equals	16.356 per cent
Interstate	7,953,734.41 equals	83.644 per cent

316 *Miscellaneous Freight Earnings Divided on Basis of Transportation Revenue.*

Intrastate	$51,428.34 equals	16.356 per cent
Interstate	263,002.68 equals	83.644 per cent

Total freight earnings:

Intrastate	$1,606,771.26 equals	16.356 per cent
Interstate	8,216,737.09 equals	83.644 per cent
Total	$9,823,508.35 equals	100 per cent

Division Passenger Earnings Between Intrastate and Interstate.

Passenger rate:

Intrastate	$1,015,150.34 equals	34.344 per cent
Interstate	1,940,718.17 equals	65.656 per cent

Miscellaneous Passenger Earnings Divided on Basis of Transportation Revenue.

Intrastate	$191,182,75 equals	34.344 per cent
Interstate	365,487.26 equals	65.656 per cent

Total passenger earnings:

Intrastate	$1,206,333.09 equals	34.344 per cent
Interstate	2,306,205.43 equals	65.656 per cent
Total	$3,512,538.52 equals	100 per cent

In addition to the foregoing earnings there was derived from the use of property included in the foregoing valuation certain "miscellaneous income net items" from outside operations (sleeping, parlor and dining cars, etc.), rental received for use of tracks, yards and other property and hire of equipment, amounting in the aggregate to $346,936.40 plus $13,336,046.87 equals $13,682,983.27. (Ex. 80-B—Elliott.)

317 *Operating Expenses.*

Total operating expenses in Minnesota for said year. (Exhibit 80-B—Elliott.)	$7,655,350.20
Total taxes	596,118.51
Total	$8,251,468.71

(Exhibit 80-B—Elliott).

Total net income derived from the use of Minnesota property, included in valuation,—gross earnings from all such sources, $13,682,983.27—less operating expenses and taxes $8,251,468.71, leaves $5,431,514.56 equals 6.021 per cent return of value.

Division of Operating Expenses Between Freight and Passenger.

Of the total operating expenses there was expended in the conduct of the freight business	$5,343,718.25
And in the conduct of the passenger business	2,311,631.95
Total	$7,655,350.20

(Exhibit 79—Elliott.)

Division of Freight Operating Expenses Between Intrastate and Interstate Freight.

The total freight operating expenses—$5,343,718.25 may be fairly and justly divided between the intrastate freight business and the interstate freight business, on either one of two bases:

1. The relation of the average intrastate ton mile cost to the average interstate ton mile cost—"Equated Ton Mile Basis"; and

2. The relation of cost required to produce a given amount of revenue in the intrastate business compared with the cost required to produce the same amount of revenue in the interstate business—"Equated Revenue Basis."

318 As hereinbefore found, during the said year, ending June 30, 1908, it cost said Company at least 2½ times as much on the average to produce a ton mile in the intrastate business as in the interstate busines-.

During said year the relation of revenue per ton per mile derived from the intrastate business was as 1.4387 is to 1.0000, and on the same rates and under like conditions such relation will hereafter continue to be substantially the same.

To divide the total freight operating expenses on the Equated Ton Mile Basis—the relation of cost per ton per mile of intrastate business to the cost per ton per mile of the interstate business being as 2½ is to 1—multiply the actual number of intrastate ton miles by 2½ and the product will be the number of intrastate ton miles which would have been produced by the expenditure which was actually made in the conduct of the intrastate freight business, if the production of a ton mile in the intrastate business on the average had been attended by the same cost as the production of a ton mile in the interstate business on the average,—then add such product to the actual number of interstate ton miles, and the sum will be the total number of ton miles, both intrastate and interstate which would have been produced by the expenditure which was actually made in the conduct of both classes of business if the production of a ton mile in the intrastate business on the average had been attended by the same cost as the production of a ton mile in the interstate business on the average,—this total may be called the "Equated Ton Miles." For the intrastate operating expenses take such percentage of the total freight operating expenses as the number of ton miles so increased—or equated—is of the total number of equated ton miles, and for the interstate operating expenses take such per cent of the total operating expenses as the interstate ton miles is of the total equated ton miles.

To divide such total freight operating expenses on the
319 Equated Revenue Basis, the relation of cost per ton per mile of the intrastate business to the cost per ton per mile of the interstate business, being as 2½ is to 1, and the relation of revenue per ton per mile derived from the intrastate business to the revenue per ton per mile derived from the interstate business, being as 1.4387 is to 1.0000, first determine what—on such facts—is the relation of cost per ton per mile in the intrastate business in proportion to revenue, to the cost per ton per mile in the interstate business in proportion to revenue. This may be done by dividing such ton mile relation by such revenue relation, as follows:

$$\frac{250}{100} \div \frac{1.4387}{1.0000} = \frac{1.7377}{1.0000}$$

It, therefore, appears that the production of a given amount of revenue in the intrastate freight business is attended with greater cost than the production of the same amount of revenue in the interstate freight business, and that such excess of cost is and will be at least 73.77 per cent.

To divide total freight operating expenses on the "Equated Revenue Basis" in accordance with the facts in this case as above stated:

Increase the intrastate earnings by 73.77%, thereby showing what would have been earned by the same actual expenditure in the

conduct of the intrastate business had it been attended with the same relative cost as the intrastate business. Then add the intrastate earnings, as so increased—or equated—to the interstate earnings, thereby ascertaining what would have been earned by the actual expenditure in conducting both intrastate and interstate traffic had the former been attended with the same relative cost as the latter. Then ascertain what proportion of this total represents the intrastate earnings as so increased—or equated—and what proportion represents the interstate earnings, and then ascertain the corresponding proportions of the total cost of the intrastate and interstate freight
320 traffic, and the same will be the cost of intrastate freight business and interstate freight business respectively. (See 163 Fed. 141.)

The equated ton mile basis on the relation of 2½ to 1 is in this case exactly the same as the equated revenue basis on the relation of 1.7377 to 1.0000.

Applying either of these rules to the facts above stated, the total freight operating expenses—$5,343,718.25—is divided as follows:

Intrastate	$1,355,273.82=25.362%
Interstate	3,988,444.43=74.638%
	$5,343,718.25=100%

Division of Total Passenger Operating Expenses Between Intrastate Passenger and Interstate Passenger.

As hereinbefore stated, it is found that during said year it cost said Company to produce an intrastate passenger mile in said State 1.15 times as much as to produce an interstate passenger mile in said State.

The evidence shows that the average revenue per passenger mile in the intrastate business was $1.9404 (computed from 80 Elliott), and in the interstate business was 1.9228 (computed from 80 Elliott). The relation of such revenue, intrastate to interstate, is as 1.0092 to 1.0000. The relation of cost in proportion to revenue is:

$$\frac{115}{100} \div \frac{1.0092}{1.0000} = \frac{1.1395}{1.0000} \text{ or } 1.1395 \text{ to } 1.0000.$$

Such total passenger operating expenses may fairly and justly be divided between the intrastate business and the interstate business on the "Equated Passenger Mile Basis," or the "Equated Revenue Basis," in like manner as that hereinbefore stated for the
321 division of the freight operating expenses between the intrastate freight business and interstate freight business on the two similar bases heretofore explained.

The "Equated Passenger Mile Basis," on relation of cost per passenger mile intrastate to interstate, 1.15 to 1, is exactly the same as the "Equated Revenue Basis" on the relation of 1.1395 to 1.0000.

Dividing the total passenger operating expenses, $2,311,631.95—100%—on either of such bases, there will be assigned to the intrastate passenger business $863,325.18=37.347%, and to the interstate passenger business $1,448,306.77=62.653%.

Apportionment of Taxes to Various Classes of Business.

The total taxes and assessments paid in Minnesota by said Company in said year amounted to $596,118.51. Such sum may be fairly and justly apportioned to the various classes of business on the gross earnings basis as follows:

Intrastate freight	$71,820.32
Interstate freight	367,286.53
Intrastate passenger	53,924.08
Interstate passenger	103,087.58
	$596,118.51

Apportionment of Other Income to Various Classes of Business on the Gross Earnings Basis.

During said year the Company received for "Rentals" and for "Hire of Equipment" over and above amounts paid on account thereof in Minnesota, $259,196.65, which amount may justly and fairly be distributed between the various classes of business, on the gross earnings basis.

In addition to the last mentioned sum, there was received from "Outside Operations" (consisting of sleeping, dining, chair and parlor cars, etc.), $87,739.75, which may fairly and justly
322 be divided between the intrastate passenger business and the interstate passenger business on the passenger earnings basis.

On account of the two items last mentioned there should be added to the earnings derived from each class of business the following sums:

Intrastate freight	$31,227.99
Interstate freight	159,698.85
Total	$190,926.84
Intrastate passenger	$53,579.92
Interstate passenger	102,429.64
Total	$156,009.56

(See Exhibit 80—B Elliott).

Net Income Applicable to Return Upon Valuation of Property Apportioned to the Various Classes of Business.

If from such total receipts so assigned to each class of intrastate business as hereinbefore stated, there be deducted the sum of the

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RESULTS IN NORTHERN PACIFIC CASE

Using Earnings, Operating Expenses, Miscellaneous Income and Taxes shown in Complainant's Exhibits 79, 80 and 80-B Elliott. Division of Operating Expenses between Intrastate and Interstate as per bases shown in body of statement.
Year Ending June 30, 1908.

STATE OF MINNESOTA.

	Intrastate		Interstate		Total	
Freight Revenue	$1,555,342.92	16.356%	$7,953,734.41	83.644%	$9,509,077.33	100%
Miscellaneous Freight Earnings divided on basis of revenue	51,428.34	16.356%	263,002.68	83.644%	314,431.02	100%
Freight Earnings	$1,606,771.26	16.356%	$8,216,737.09	83.644%	$9,823,508.35	100%
Passenger Revenue	$1,015,150.34	34.344%	$1,940,718.17	65.656%	$2,955,868.51	100%
Miscellaneous Passenger Earnings divided on basis of revenue	191,182.75	34.344%	365,487.26	65.656%	556,670.01	100%
Passenger Earnings	$1,206,333.09	34.344%	$2,306,205.43	65.656%	$3,512,538.52	100%

OPERATING EXPENSES:	Freight	Passenger	Total
Transportation Expenses	$3,118,371.89	$1,089,268.66	$4,207,640.55
Maintenance of Way and Structures	799,320.09	650,372.91	1,449,693.00
Maintenance of equipment	1,257,377.42	410,636.52	1,668,013.94
Traffic expenses	69,804.67	89,524.61	159,329.28
General expenses	98,844.18	71,829.25	170,673.43
Total	$5,343,718.25	$2,311,631.95	$7,655,350.20

BASES FOR DIVIDING OPERATING EXPENSES:

Freight—On basis of 1 Intrastate ton mile costing as much as 2.5 Interstate ton miles.

EQUATED TON MILE BASIS

	Actual			Equated		Proportion	Operating Exps.
Intrastate ton miles	130,580,988	× 2.5	=	326,452,470	=	25.362%	$1,355,273.82
Interstate ton miles	960,709,494	× 1.0	=	960,709,494	=	74.638%	3,988,444.43
	1,091,290,482			1,287,161,964	=	100.%	$5,343,718.25

EQUATED REVENUE BASIS

	Actual Revenue			Equated Revenue		
Intrastate ton miles	$1,555,342.92	× 1.7377	=	$2,702,719.39	=	25.362%
Interstate ton miles	7,953,734.41	× 1.	=	7,953,734.41	=	74.638%
				$10,656,453.80	=	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 115 Interstate passenger miles.

EQUATED PASSENGER MILE BASIS

Intrastate passenger miles	52,317,140	× 1.15	=	60,164,711	=	37.347%	$863,325.18
Interstate passenger miles	100,931,180	× 1.00	=	100,931,180	=	62.653%	1,448,306.77
	153,248,320			161,095,891	=	100.%	$2,311,631.95

EQUATED REVENUE BASIS

Intrastate passenger miles	$1,015,150.34	× 1.1395	=	$1,156,763.81	=	37.347%
Interstate passenger miles	1,940,718.17	× 1.	=	1,940,718.17	=	62.653%
				$3,097,481.98	=	100.%

Divided on basis of earnings { Freight $9,823,508.35 = 73.661%; Passenger 3,512,538.52 = 26.339% }

Total $13,336,046.87 = 100.%

		Freight		Passenger	
Rentals received less rental paid	73.661% of	$241,023.55	$190,926.84	$68,269.81	26.339%
Hire of equipment		18,173.10			
Taxes	73.661% of	596,118.51	439,106.85	157,011.66	26.339%

SUMMARY OF RESULTS (Valuation divided on basis of Earnings)

FREIGHT BUSINESS:	Intrastate		Interstate		Total	
Earnings	$1,606,771.26	16.356%	$8,216,737.09	83.644%	$9,823,508.35	100%
Rentals and hire of equipment	31,227.99	16.356%	159,698.85	83.644%	190,926.84	100%
	$1,637,999.25	16.356%	$8,376,435.94	83.644%	$10,014,435.19	100%
Operating expenses	$1,355,273.82		$3,988,444.43		$5,343,718.25	
Taxes	71,820.32	16.356%	367,286.53	83.644%	439,106.85	100%
	$1,427,094.14		$4,355,730.96		$5,782,825.10	
Income applicable to valuation	$210,905.11		$4,020,704.98		$4,231,610.09	
Valuation 73.661% of $90,204,545.00	10,867,837.00	16.356%	55,577,733.00	83.644%	66,445,570.00	100%
Annual return	1.941%		7.234%		6.369%	
PASSENGER BUSINESS:						
Earnings	$1,206,333.09	34.344%	$2,306,205.43	65.656%	$3,512,538.52	100%
Outside operations	30,133.34	34.344%	57,606.41	65.656%	87,739.75	100%
Rentals and hire of equipment	23,446.58	34.344%	44,823.23	65.656%	68,269.81	100%
	$1,259,913.01	34.344%	$2,408,635.07	65.656%	$3,668,548.08	100%
Operating expenses	$863,325.18		$1,448,306.77		$2,311,631.95	
Taxes	53,924.08	34.344%	103,087.58	65.656%	157,011.66	100%
	$917,249.26		$1,551,394.35		$2,468,643.61	
Income applicable to valuation	$342,663.75		$857,240.72		$1,199,904.47	
Valuation 26.339% of $90,204,545.00	8,159,782.00	34.344%	18,599,193.00	65.656%	23,758,975.00	100%
Annual return	4.200%		8.495%		5.050%	
TOTAL BUSINESS:						
Income applicable to valuation	$553,568.86		$4,877,945.70		$5,431,514.56	
Valuation	19,027,619.00		71,176,926.00		90,204,545.00	
Annual return	2.909%		6.853%		6.021%	

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $21,493.67, nor any similar losses that would have accrued on Interstate commodity business.

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operating expenses and taxes so assigned to each such class of intrastate business, we have the following results:

Intrastate net freight income $210,905.11 yields sufficient for an annual return on $10,867,837 of only 1.941%.

NOTE.—The losses which would have resulted from the application of the commodity rates enjoined have not been deducted. From Exhibit 63—Johnson, it is estimated that the intrastate freight earnings in Minnesota would have been reduced in said year by the application of such rates $21,493.67, which would effect a reduction in the rate of return last mentioned.

Intrastate passenger income $342,663.75 sufficient to yield an annual return upon $8,159,782 of only 4.2%.

323 Total intrastate (freight and passenger) income, $553,568.-86, sufficient to yield an annual return on $19,027,619 (total valuation assigned to all intrastate business) of only 2.909%.

The foregoing data, deductions and results are included or deducible from the table following:

(Here follows table marked p. 323½.)

324 NOTE 1.—In this statement the valuation of the property is divided upon the revenue basis between freight and passenger and inter and intra of each.

If it be considered that operating expenses more correctly measure the use of the property than earnings, the division would be as follows:

Intra Freight.

Dividing Valuation on Operating Expense Basis.

Intra freight operating expenses.....	$1,355,273.82=	17.7%
All operating expenses.....	7,655,350.20=	100%
17.7% of $90,204,545 valuation=	16,166,204	
Intra income—freight.....	210,905.11	
Annual return.....		1.304%

Intra Passenger.

Intra Passenger operating expenses.....	$863,325.18=	11.28%
All operating expenses.....	7,655,350.20=	100%
11.28% of $90,204,545 valuation=	10,175,073	
Intra income—passenger.....	342,663.75	
Annual return.....		3.368%

The rate of return on interstate freight and passenger would be increased over that shown in the statement.

There were introduced in evidence various statements by defendants for the purpose of showing what they claimed the actual net Minnesota intrastate freight and Minnesota intrastate passenger incomes were in the business of the fiscal year ending June 30, 1907, but the same, when taken in connection with all the testimony, fail to show that the rates complained of were not confiscatory. The defendants offered no corresponding statements with respect to such business for the year ended June 30, 1908.

325 Great Northern Case.

Net Revenue Derived from Freight Business and Passenger Business Respectively.

Gross Earnings.

The total gross earnings of the Company from all sources, involving any use of the property above valued within the state of Minnesota, for the fiscal year ending June 30, 1908, was $20,831,317.57. (See Exhibit 30—Parker, 49—Martin, 53—Ward and reports to the State, fiscal year ending June 30, 1908.)

The above total amount is made up as follows:

Freight revenue transportation	$15,658,661.07
Miscellaneous freight earnings derived from switching, demurrage, storage, etc	278,337.78
Total freight earnings including miscellaneous	$15,936,998.85
Total passenger revenue (transportation of persons)	3,640,627.45
Miscellaneous passenger earnings (consisting of mail, express, etc.)	698,281.45
Total passenger earnings	$4,338,908.90
Total freight and passenger earnings	20,275,907.75

Division of Freight Earnings Between Intrastate and Interstate.

Total freight revenue transportation:

Intrastate	$2,366,359.02=15.112%
Interstate	13,292,302.05=84.888%

Miscellaneous freight earnings divided on basis of transportation revenue:

Intrastate	$42,062.41=15.112%
Interstate	236,275.37=84.888%

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Total freight earnings:

Intrastate	$2,408,421.43=15.112%
Interstate	13,528,577.42=84.888%
Total	$15,936,998.85=100%

Division Passenger Earnings Between Intrastate and Interstate.

Passenger revenue:

Intrastate	$1,750,522.02=48.083%
Interstate	1,890,105.43=51.917%

Miscellaneous passenger earnings divided on basis of transportation revenue:

Intrastate	$335,754.66=48.083%
Interstate	362,526.79=51.719%

Total passenger earnings:

Intrastate	$2,086,276.67=48.083%
Interstate	2,252,632.22=51.917%

In addition to the foregoing earnings there was derived from the use of the property included in the foregoing valuation certain mis-

cellaneous income from outside operations (sleeping, parlor, dining cars, etc.), rentals received for use of tracks, yards and other property and hire of equipment amounting in the aggregate to $555,409.82+$20,275,907.75=$20,831,317.57. (See exhibits and reports above cited.)

Operating Expenses.

Total operating expenses in Minnesota for said year (See Exhibit 47—Martin)	$11,811,414.35
Total taxes	839,878.11
Total	$12,651,292.46

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Total net income derived from the use of property in Minnesota—gross earnings from all sources	$20,831,317.57
Less operating expenses and taxes	12,651,292.46
Leaves	$8,180,025.11

=5.909% on $138,425,291 total Minnesota valuation.

Division of Operating Expenses Between Freight and Passenger.

Of the total operating expenses there was expended in the conduct of the freight business	$8,141,355.61
And in the conduct of the passenger business	3,670,058.74
Total	$11,811,414.35

(See Exhibit 47—Martin.)

Division of Freight Operating Expenses Between Intrastate and Interstate.

The total freight operating expenses—$8,141,355.61—may be justly and fairly divided between the intrastate freight business and the interstate freight business on either of two bases:

1. The relation of the average intrastate ton mile cost to the average interstate ton mile cost—"Equated Ton Mile Basis;" and

2. The relation of cost required to produce a given amount of revenue in the intrastate business compared with the cost required to produce the same amount of revenue in the interstate business—"Equated Revenue Basis."

As hereinbefore found, it did during said year, cost said Company at least 2½ times as much on an average to produce a ton mile in the intrastate business as in the interstate business.

328 During said year the relation of revenue per ton per mile derived from intrastate business to the revenue per ton mile derived from the interstate business was as 2.02894 is to

1.00000 (53—Ward); and on the same rates and under like conditions such relation will hereafter continue to be substantially the same.

The relation of cost per ton per mile in the intrastate business in proportion to revenue to the cost per ton per mile in the intrastate business in proportion to revenue is..... $\frac{250}{100} \div \frac{2.02894}{1.00000}$

or 1.23217 to 1.00000. That is to say, the production of a given amount of revenue in the intrastate freight business is attended with greater cost than the production of the same amount of revenue in the interstate freight business, and such excess of cost is and will be at least 23.217%.

The division of the total freight operating expenses on the Equated Ton Mile Basis or on the Equated Revenue Basis may be effected in the same manner as that heretofore described in the Northern Pacific case.

The Equated Ton Mile Basis on the relation of 2½ to 1 is in this case exactly the same as the Equated Revenue Basis on the relation of 1.23217 to 1.

Applying either of the rules above referred to to the facts in this case as above stated, the total freight operating expenses, $8,141,-355.61, is divided as follows:

Intrastate	$1,464,629.87=17.99%
Interstate	6,676,725.74=82.01%
	$8,141,355.61=100%

Division of Total Passenger Operating Expenses Between Intrastate Passenger and Interstate Passenger.

As hereinbefore stated it is found that during said year it cost said Company to produce an intrastate passenger mile, in said
329 State, 1.15 times as much as to produce an interstate passenger mile in said State.

The evidence shows that the average revenue per passenger per mile in the intrastate business was 1.9016, and in the interstate business was 2.0469. (53—Ward.)

The relation of such revenue intrastate to interstate is as 0.92901 is to 1.0000.

The relation of cost in proportion to revenue is

$$\frac{115}{100} \div \frac{0.92901}{1.00000} = \frac{1.2378}{1.00000} \text{ or } 1.2378 \text{ to } 1.$$

Such total passenger operating expenses may fairly and justly be divided between the intrastate business and the interstate business on the Equated Passenger Mile Basis, or the Equated Revenue Basis, in like manner as that hereinbefore stated in the Northern Pacific

case for the division of the freight operating expenses between the intrastate freight business and the interstate freight business, on the two similar bases there explained.

The Equated Passenger Mile Basis on the relation of cost per passenger mile intrastate to interstate, 1.15 to 1. is exactly the same in this case as the Equated Revenue Basis on the relation of 1.2378 to 1.

Dividing the total passenger operating expenses—$3,670,058.74—100%—on either of such bases, there will be assigned to intrastate passenger business $1,960,215.07=53.411%, and to the interstate passenger $1,709,843.67=46.589%.

Apportionment of Taxes to Various Classes of Business.

The total taxes and assessments paid in Minnesota by said Company in said year amounted to $839,878.11. Such sum may be fairly and justly apportioned to the various classes of business on the gross earnings basis as follows:

330	Intrastate freight	$99,761.00
	Interstate freight	560,383.19
	Intrastate passenger	86,421.46
	Interstate passenger	93,312.46
	Total	$839,878.11

Apportionment of Other Income to Various Classes of Business on Gross Earnings Basis.

During said year the Company received for rentals and for hire of equipment over and above amounts paid on account thereof in Minnesota $462,763.95, which amount may justly and fairly be distributed between the various classes of business on the gross earnings basis.

In addition to the said last mentioned sum there was received from outside operations (consisting of sleeping, dining, chair and parlor cars, etc.) $92,645.87, which may fairly and justly be divided between the intrastate passenger business and the interstate passenger business on the passenger earnings basis.

On account of the two items last mentioned there was added to the earnings derived from each class of business the following sums:

Intrastate freight	$54,976.35
Interstate freight	308,756.11
	$363,732.46
Intrastate passenger	$92,164.22
Interstate passenger	99,513.14
	$191,677.36

(See reports to the State for the year ending June 30, 1908.)

RESULTS IN GREAT NORTHERN CASE.

331.

Using Complainants' Exhibits 47 and 48—Martin and 53—Ward, together with reports of Great Northern Railway Co., Minneapolis Western Railway and Duluth Terminal Railway to State of Minnesota. Division of Operating Expenses, Miscellaneous Earnings, Outside Operations, Rentals, Hire of Equipment and Taxes between Intrastate and Interstate as shown in the body of statement. Year Ending June 30, 1908.

	Intrastate		Interstate		Total	
Freight revenue	$2,366,359.02	= 15.112%	$13,292,302.05	= 84.888%	$15,658,661.07	= 100%
Miscellaneous freight earnings divided on basis of revenue	42,062.41	= 15.112%	236,275.37	= 84.888%	278,337.78	= 100%
Freight earnings	$2,408,421.43	= 15.112%	$13,528,577.42	= 84.888%	$15,936,998.85	= 100%
Passenger revenue	$1,750,522.02	= 48.083%	$1,890,105.43	= 51.917%	$3,640,627.45	= 100%
Miscellaneous passenger earnings divided on basis of revenue	335,754.66	= 48.083%	362,526.79	= 51.917%	698,281.45	= 100%
Passenger earnings	$2,086,276.68	= 48.083%	$2,252,632.22	= 51.917%	$4,338,908.90	= 100%

Operating Expenses:	Freight	Passenger	Total
Transportation expenses	$3,921,805.03	$1,471,759.25	$5,393,564.28
Maintenance of way and structures	1,905,856.44	1,328,835.87	3,234,692.31
Maintenance of equipment	2,034,122.76	651,586.24	2,685,709.00
Traffic expenses	131,311.40	116,530.14	247,841.54
General expenses	148,259.98	101,347.24	249,607.22
	$8,141,355.61	$3,670,058.74	$11,811,414.35

Bases for Dividing Operating Expenses:

Freight—On basis of 1 Intrastate ton mile costing as much as 2.5 Interstate ton miles.

Equated Ton Mile Basis

	Actual			Equated		Proportion	Operating Exps.
Intrastate ton miles	171,317,766	× 2.5	=	428,294,415	=	17.99%	$1,464,629.87
Interstate ton miles	1,952,426,967	× 1.0	=	1,952,426,967	=	82.01%	6,676,725.74
	2,123,744,733			2,380,721,382	=	100.%	$8,141,355.61

Equated Revenue Basis

	Actual Revenue			Equated Revenue		
	$2,366,359.02	× 1.23217	=	$2,915,756.59	=	17.99%
	13,292,302.05	× 1.	=	13,292,302.05	=	82.01%
				$16,208,058.64	=	100.%

Passenger—On basis of 100 Intrastate passenger miles costing as much as 115 Interstate passenger miles.

Equated Passenger Mile Basis

Intrastate passenger miles	92,053,657	× 1.15	=	105,861,706	=	53.411%	$1,960,215.07
Interstate passenger miles	92,341,852	× 1.	=	92,341,852	=	46.589%	1,709,843.67
	184,395,509			198,203,558	=	100.%	$3,670,058.74

Equated Revenue Basis

$1,750,522.02	× 1.2378	=	$2,166,796.16	=	53.411%	
1,890,105.43	× 1.	=	1,890,105.43	=	46.589%	
			$4,056,901.59	=	100.%	

Divided on basis of earnings { Freight	$15,936,998.85	=	78.6%
Passenger	4,338,908.90	=	21.4%
Total	$20,275,907.75	=	100.%

	Totals	Freight 78.6%	Passenger 21.4%
Rentals received	$378,934.32		
Rentals paid	56,594.84		
Net rentals received	$322,339.48		
Hire of equipment received	140,424.47		
	$462,763.95	$363,732.46	$99,031.49
Taxes paid	839,878.11	660,144.19	179,733.92

Summary of Results.

Freight Business:	Intrastate		Interstate		Total	
Earnings	$2,408,421.43	= 15.112%	$13,528,577.42	= 84.888%	$15,936,998.85	= 100%
Proportion of rentals and hire of equipment	54,967.25	= 15.112%	308,765.21	= 84.888%	363,732.46	= 100%
	$2,463,388.68	= 15.112%	$13,837,342.63	= 84.888%	$16,300,731.31	= 100%
Operating expenses	$1,464,629.87		$6,676,725.74		$8,141,355.61	
Taxes	99,761.00	= 15.112%	560,383.19	= 84.888%	660,144.19	= 100%
	$1,564,390.87		$7,237,108.93		$8,801,499.80	
Income applicable to valuation	$898,997.81		$6,600,233.70		$7,499,231.51	
Valuation 78.6% of $138,425,291.00	10,442,200.00	= 15.112%	92,360,079.00	= 84.888%	108,802,279.00	= 100%
Annual return on valuation	8.468%		7.146%		6.893%	
Passenger Business:						
Earnings	$2,086,276.68	= 48.083%	$2,252,632.22	= 51.917%	$4,338,908.90	= 100%
Outside operations	44,546.91		48,098.96		92,645.87	
Proportion of rentals and hire of equipment	47,617.31		51,414.18		99,031.49	
	$2,178,440.90	= 48.083%	$2,352,145.36	= 51.917%	$4,530,586.26	= 100%
Operating expenses	$1,960,215.07		$1,709,843.67		$3,670,058.74	
Taxes	86,421.46	= 48.088%	93,312.46	= 51.917%	179,733.92	= 100%
	$2,046,636.53		$1,803,156.13		$3,849,792.66	
Income applicable to valuation	$131,804.37		$548,989.23		$680,793.60	
Valuation 21.4% of $138,425,291.00	14,243,633.00	= 48.083%	15,379,379.00	= 51.917%	29,623,012.00	= 100%
Annual return on valuation	0.925%		3.570%		2.298%	
Freight and Passenger Business:						
Total income in Minnesota applicable to valuation	$1,030,802.18		$7,149,222.93		$8,180,025.11	
Valuation	30,685,833.00		107,739,458.00		138,425,291.00	
Annual return	3.359%		6.636%		5.909%	

NOTE: The above computations do not take into consideration the loss that would have accrued on Minnesota Intrastate commodity business by application of the rates under litigation, amounting to $87,261.43, nor a loss of $208,923.43 that would have accrued on Interstate commodity business in Minnesota. (Complainants' Exhibits 22, 24, 26 and 28—Parker.)

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331 *Net Income Applicable to Return upon Valuation of Property Apportioned to the Various Classes of Business.*

If from such total receipts so assigned to each class of intrastate business as hereinbefore stated there be deducted the sum of the operating expenses and taxes so assigned to each such class of intrastate business, we have the following results:

Intrastate freight, income, $898,997.81, sufficient to yield an annual return on $16,442,200 of only 5.468%.

NOTE.—The losses which would have resulted from the application of the commodity rates enjoined have not been deducted. The same are shown by Exhibit 22—Parker to be $87,261.43 (and by Exhibit G—Hillman, Table 11, $129,852.53). Deducting the amount shown by Complainants—$87,261.43—less 4% taxes—$3,490.46—leaves a net deduction $83,770.97, which subtracted from net intrastate freight income as above stated, $898,997.81, would leave $815,226.84, sufficient to yield an annual return on the value above stated (valuation not reapportioned on account of change in revenue) of 4.958%. And if the amount of such losses as estimated by the defendants be taken, the rate of return would be less than the figure last stated.

Intrastate passenger income $131,804.37 is sufficient to yield an annual return upon $14,243,633 of only 0.925%.

Total intrastate (freight and passenger) income (estimated commodity losses not deducted), $1,030,802.18 is sufficient to yield an annual return on $30,685,833 (total valuation assigned to all intrastate business) of only 3.359%.

Deducting the commodity losses, less the taxes, as estimated by complainants as aforesaid, the total intrastate (freight and passenger) income would be sufficient to yield an annual return on total value assigned to all intrastate business of only 3.086%.

The foregoing data, deductions and results are included in or deducible from the table following:

(Here follows table, marked p. 331½.)

332 NOTE 1.—In this statement valuation of the property is divided upon the revenue basis between Freight and Passenger, and inter and intra of each.

If it be considered that operating expenses more correctly measure the use of the property than earnings, the division would be as follows:

Intra Freight.

Intra Freight operating expenses	1,464,629.87	=12.4%
All operating expenses	11,811,414.35	= 100%
12.4% of $138,425,291 valuation	= 17,164,738	
Income—Intra Freight	898,997.81	
Annual return	5.237%	

Intra Passenger.

Intra Passenger operating expenses	$1,960,215.07	=16.6%
All operating expenses	11,811,414.35	= 100%
16.6% of $138,425,291 valuation	= 22,978,596	
Income—Intra Passenger	131,804.37	
Annual return	0.574%	

The rate of return on interstate freight and interstate passenger would be increased over that shown in the statement.

NOTE 2.—The intrastate freight loss which would have resulted by the application of Chapter 232 was estimated by Hillman's Exhibit G, Table 10, at $129,852.53. By Parker's Exhibit 22 it was estimated at $87,261.43. In the statement no deduction has been made from intrastate freight revenue on account of such loss.

The amount of intrastate net freight revenue shown by the statement is	$898,997.81
Subtracting loss shown by Exhibit 22—Parker	87,261.43
The new net intrastate revenue would be	$811,736.38

333 Divided by the proportion of value assigned to intrastate freight, to-wit, $16,442,200, the net annual return of 4.937% on intrastate freight will be the result instead of 5.468% as shown on the statement. (The computation producing the rate of return first above mentioned—4.937—does not take into account the reapportionment of value to intrastate freight resulting from the reduction of intra gross freight earnings. If such reapportionment were made the value of property so assigned would be somewhat decreased, and the rate of return somewhat increased over 4.937).

NOTE 3.—Hillman does not show the intrastate freight loss which did result from the application of the merchandise rates complained of. Parker by his Exhibit 22 did show the same to be $178,978.96. What would be the net annual return on value of property appor-

tioned to intrastate freight if injunction continues against commodity rates, and old merchandies rates prior to orders of September 6, 1906, and May 3, 1907, be fully restored?

The statement shows net intrastate freight pays.....	$898,997.81
Add merchandise loss	178,978.96
And the new net intrastate freight income would be.	$1,077,976.77

which divided by value assigned to intrastate freight—$16,442,200—(not reapportioned to correspond with increased intrastate earnings), less than 6.556% would be produced. But if valuation be reapportioned to correspond with increased intrastate gross earnings, $17,115,651.00, valuation would be assigned to intrastate freight business, which divided into the new net intrastate freight earnings—$1,077,976.11—then 6.293% return on intrastate freight business would be shown on basis of old rates, merchandise and commodity.

NOTE 4.—The statement shows passenger intrastate net income applicable to valuation to be $131,804.37, and the rate of return to be less than 1%, to-wit, 0.925%. Tilton, by his Exhibit 37, shows a passenger intrastate loss of $470,673.17. If this be added
334 to $131,804.37, a new net intra passenger income applicable to valuation of $602,477.54 would result. The value apportioned to intra passenger business in the statement on the basis of the gross earnings as they were was $14,243,633. If the passenger rates were restored to the 3 cent basis, and gross earnings thereby increased, an apportionment of value on basis of increased earnings would assign to intra passenger $16,914,224.00, which divided into the new net income—$602,477.54—would produce only 3.56% return on intra passenger business if the old rates were restored.

There were introduced in evidence various statements by defendants for the purpose of showing what they claim the actual net Minnesota intrastate freight and Minnesota intrastate passenger income were on the business of the fiscal year ending June 30, 1908, (see Exhibit G—Hillman).

The gross receipts of said Company from all sources in Minnesota used in the foregoing table exceeds the gross receipts charged against the Company in Minnesota by defendants' evidence (excluding income on investments), $146,528.27, of which more than $140,000 was on account of hire of equipment not taken into account by defendants in their tables. There is no dispute between the parties as to the total amount of operating expenses chargeable to the business of the Company done within the State.

There is considerable difference between the parties in the distribution of revenue to the various classes of business, intrastate freight and interstate freight, intrastate passenger and interstate passenger, and also a considerable difference as to the assignment of operating expenses to each such class of business, which difference, as respects the operating expenses, is due to the methods of division of the total amount thereof employed by the witness Hillman. As hereinbefore stated, the results obtained by the employment of his

methods of division of operating expenses are found not to be correct, fair or just.

If the distribution of the total revenue to such various classes of business be made as the defendants' exhibits indicate, and
335 the division of the operating expenses between the freight department and the passenger department be made as hereinbefore found to be fair and just, and the division of freight cost between the intrastate business and the interstate business be made as hereinbefore found to be fair and just, and the division of passenger cost between the intrastate business and interstate business be made as hereinbefore found to be just and fair, the result would not affect the final decree recommended to be entered.

Apportionment of Value Between Freight and Passenger Business and Between Intrastate and Interstate Business of Each.

Minneapolis & St. Louis Case.

Total value of the property of the Minneapolis & St. Louis Company used in the fiscal year ending June 30, 1907, in the conduct of its business in Minnesota, was, as hereinbefore found, $21,608,464.

Such total value may be fairly and justly apportioned between the freight business and the passenger business on the gross earnings basis—that is, assign to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both. The value so apportioned to the freight and passenger business may in similar manner be justly and fairly divided on the gross earnings basis between the intrastate business and the interstate business of each.

A statement of freight and passenger revenues in Minnesota, for the year ending June 30, 1907, divided between Minnesota intrastate business and Minnesota interstate business, is as follows:

336	Minnesota intrastate.	Minnesota interstate.	Total.
Freight revenue....	$534,696.66	$1,180,155.91	$1,714,852.57
Passenger revenue..	352,008.52	298,258.28	650,266.80
	$856,705.18	$1,478,414.19	$2,365,119.37
Per cent.....	37.49%	62.51%	100%

(Ex. 33—Scott, Section D.)

The following is a summary of the apportionment of total value to the different classes of business in Minnesota:

Summary of Apportionment of Total Value to the Different Classes of Business in Minnesota.

Total value of property used in transportation business in Minnesota, for the fiscal year ending June 30, 1907.....	$21,608,464.00

Total value apportioned to freight business, 72.51%, or.....	$15,668,297.24	
Total value apportioned to passenger business, 27.49%, or.....	5,940,166.76	
Total		$21,608,464.00
Assign to intrastate freight business 31.180% of total value apportioned to freight business.....		$4,885,673.71
Assign to interstate freight business 68.820% of total value apportioned to freight business.....		10,782,623.53
Assign to intrastate passenger business in Minnesota 54.13% of the total value assigned to passenger business.....		3,215,339.44
337 Assign to interstate passenger business in Minnesota 45.87% of total value assigned to passenger business in Minnesota.....		2,724,827.32
		$21,608,464.00

If such valuation were to be apportioned on the same basis but according to the figures shown by defendants' evidence (see Ex. L—Hillman, Table 14), the final decision would not be changed.

To yield an annual return of 7% upon the value so assigned, there would be required for intrastate freight	$341,997.15
For interstate freight.....	754,783.64
For intrastate passenger.....	225,073.76
For interstate passenger.....	190,737.91
Total.....	$1,512,592.48

The defendants introduced testimony and exhibits which show what they claim to have been the net income (after paying only operating expenses and taxes), derived from the intrastate freight business, and from the intrastate passenger business as follows:

Total income, all sources, applicable to intrastate freight	$225,890.00

(Defendants' Ex. L.—Hillman, Table 12.)

Total income, all sources, applicable to intrastate passenger	148,721.70

(Defendants' Ex. L.—Hillman, Table 13.)

Each of the amounts so claimed by defendants is in excess of the actual net income from all sources, derived from such classes of business respectively, over and above operating expenses and taxes. The method employed by the defendants for the ascertainment of

the amount of operating expenses chargeable to each such class of business was not correct, fair or just, and resulted in assign-
338 ing to each such class of business an amount much less than was in fact expended by said Company in said year in the conduct thereof.

* * * * * * *

The total net earnings of said Company for said year 1907 in Minnesota, from all sources, which involved the use of the property included in such valuation was $895,977.66, sufficient to yield an annual income upon such value of $21,608,464 of only 4.14%.

(See Ex. 33—Scott.)

The cost of conducting each class of the intrastate business covered by the rates complained of is greater in proportion to the revenue derived from each such class of business than was the cost of conducting the corresponding class of interstate business of said Company in said year in said state, and the amount of net income derived from each such class of intrastate business is less than sufficient to yield an annual return of 4.14% upon the proportion of the value of the whole property which was used in the conduct of each such class of business, and which is properly chargeable thereto.

Net Earnings.

(Entire Railway System of said Company.)

The net earnings, after paying only operating expenses and taxes, from 1903 to 1909, both inclusive, were as follows:

Net Earnings.

1903.	1904.	1905.	1906.
$1,398,895.30	$1,229,524.49	$1,277,870.96	$1,511,961.99

1907.	1908.	1909.
$1,419,822.54	$1,220,862.21	$1,286,494.08

(Ex. 33—Scott.)

339 *Net Earnings.*

(Minnesota.)

The net earnings of said Company, after paying only operating expenses and taxes, on all of its business in Minnesota, from all sources, involving any use of the property valued herein, from 1903 to 1909, both inclusive, were as follows:

Net Earnings.

1903.	1904.	1905.	1906.
$1,222,941.77	$1,052,478.74	$1,054,853.35	$1,109,260.56

1907.	1908.	1909.
$895,977.66	$742,377.46	$794,472.58

Interest Charges.

As of date April 30, 1908, the annual interest charges which said Company was and is subject to pay on account of bonds was $952,583.

If this be apportioned among states on the basis of gross earnings, the amount chargeable to each state is as follows:

Minnesota	$690,517
Iowa	244,120
South Dakota	17,946
	$952,583

(Exhibit 6—Scott.)

The par value of such bonds on said date was $20,011,800.
(Exhibit 6—Scott.)

Effect of Rates Complained of Upon Revenue. Merchandise Rates.

If the merchandise rates complained of had been in effect during the year ending June 30, 1907, the Minnesota intrastate rev-
340 enue of the Minneapolis & St. Louis Company derived from the business covered by such rates would have been reduced $33,367.30, more than 19½% of the revenue derived from such business.

(Ex. 16—Scott and Ex. 21—Tittemore.)

Passenger Business.

On the volume of the passenger service rendered by the Minneapolis & St. Louis Company within the state of Minnesota for the year ending June 30, 1906—the last complete fiscal year during which the basis of maximum fare of three cents per mile was applied by said Company—the losses in revenue which would have resulted had the two cent per mile passenger law complained of been in effect, are as follows:

Intrastate passenger business in Minnesota	$80,452
Interstate passenger business in Minnesota	66,372
	$146,824

(See Ex. 13—Scott.)

The volume of passenger service rendered during the fiscal year 1907 was greater than the preceding fiscal year.
(Ex. 12—Scott, Ex. 33—Scott.)

Commodities—Chapter 232.

As hereinbefore stated, the Northern Pacific Company, the Great Northern Company and the Soo Company reduced rates in the autumn of 1906, in Minnesota, on coal and grain. By reason of

these reductions the Minneapolis & St. Louis Company was compelled to make certain reductions on coal and grain on its line with respect to such business, intrastate, in Minnesota, and certain of its corresponding interstate business. Immediately prior to the commencement of these suits the Minneapolis & St. Louis Com-
341 pany, intending to obey the law and apply the rates prescribed in Chapter 232, prepared certain tariffs covering the commodities described in said Chapter 232, which tariffs with respect to intrastate business were as high as said Company could maintain under the act, and which interstate tariffs were as high as said Company could maintain and comply with the provisions of said act with respect to such intrastate business.

On the volume of business in the transportation of commodities covered by said act, of said Company, moved during the fiscal year ending June 30, 1906, the revenues of said Company—if the aforesaid tariffs required and made necessary by the provisions of said act, had been in force, would have been decreased below what the same would have been had the rates remained the same as they were in fact after the reductions in the autumn of 1906, made necessary by reason of the reductions in the northern lines hereinbefore referred to, as follows:

Minnesota intrastate..	$51,802.22,	more than 14% of revenue affected.
Minnesota interstate..	66,842.46,	more than 16% of revenue affected.
Other interstate.....	26,847.55,	more than 11% of business affected.
Making a total of...	$145,492.23,	more than 14% of business affected.

Comparing the revenue on the commodities described in said act, which would have been received on the business of the fiscal year ending June 30, 1906, under the rates prescribed in said act, with revenue which would have been received on the same business if the rates had remained the same throughout the year as they were prior to the reductions made as aforesaid in the autumn of that year, the resulting loss would have been as follows:

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Minnesota intrastate..	$70,760.83,	more than 19% of revenue affected.
Minnesota interstate..	82,101.42,	more than 19% of revenue affected.
Other interstate.....	26,847.55,	more than 11% of revenue affected.
Total	$179,709.80,	more than 17% of revenue affected.

(See Ex. 14-A—Tittemore.)

Revenue Derived from Operation, Fiscal Year Ending June 30, 1907.

(Exhibit 33—Scott, Sec. D, Exhibit M—Hillman.)

	Intrastate.	Interstate.	Total.
Freight revenue (transportation).....	$534,696.66 31.18%	$1,180,155.91 68.82%	$1,714,852.57
Miscellaneous (consisting of switching, demurrage, storage, etc.).....	1,151.55	2,541,67	3,693.22
	$535,848.21	$1,182,697.58	
Passenger revenue.....	$352,008.52 54.13%	$298,258.28 45.87%	$650,266.80
Miscellaneous (consisting of mail, express, excess baggage, etc)..... ...	60,474.43	51,246.29	111,720.72
	$412,482.95	$349,504.57	$2,480,533.31

(Division of Miscellaneous between intra and inter is on gross revenue basis.)

343 Operating expenses in the state..... $1,554,595.49
(Exhibit 33—Scott.)

Divided between freight and passenger as follows:

Passenger	$523,375.97	
Freight	1,031,219.52	$1,554,595.49

(Exhibit 33—Scott, Sec. B and p. 1175 P. R. et seq.)

Dividing freight operating expenses—$1,031,219.52—on "straight revenue basis":

Assigns 31.18%=$321,534.25 to intrastate freight,
Assigns 68.82%=$709,685.27 to interstate freight.

Dividing passenger operating expenses, $523,375.97 in like manner,

Assigns 54.13%=$283,303.41 to intrastate passenger,
Assigns 45.87%=$240,072.56 to interstate passenger.

Taxes paid in Minnesota, fiscal year ending June 30, 1907, $124,474.58, (Ex. 33—Scott, Sec. B), apportioned to the various classes of business on revenue basis.

Assigns 22.61% thereof = $28,143.70 to intrastate freight,
Assigns 49.90% thereof = $62,112.81 to interstate freight,
Assigns 14.88% thereof = $18,521.77 to intrastate passenger,
Assigns 12.61% thereof = $15,696.24 to interstate passenger.

Adding operating expenses assigned to each such class of business to taxes assigned to each such class of business, and subtracting the sum from the foregoing gross earnings from operation of each such class of revenue, and we have the following results:

Intrastate freight, net operating revenue less operating expenses and taxes	$186,170.26
Interstate freight, net operating revenue less operating expenses and taxes	410,899.50
344 Intrastate passenger, net operating revenue less operating expenses and taxes	110,657.77
Interstate passenger, net operating revenue less operating expenses and taxes	93,735.77
Total net operating revenue	$801,463.30

less taxes (stated in Ex. 33—Scott earnings over expenses and taxes.)

In addition to the earnings aforesaid the Company received in Minnesota in said year from use of its property certain "other income," being net items aggregating $94,514.42, (Ex. 33—Scott, Sec. B), which distributed on the revenue basis,

Assigns 22.61% or $21,369.71 to intrastate freight,
Assigns 49.90% or $47,162.69 to interstate freight,
Assigns 14.88% or $14,063.74 to intrastate passenger,
Assigns 12.61% or $11,918.26 to interstate passenger.

Adding $21,369.71 (other income assigned to intrastate freight) to $186,170.26 (earnings over expenses and taxes) we have $207,539.97.

The commodity rates complained of were enjoined. Had the same been in effect intrastate freight revenue would have been decreased on that account at least $51,802.22. (See Ex. 14-A—Tittemore.)

The class rates complained of were applied November 15, 1906. Had the same been in effect during the whole of the fiscal year the revenue of the Company would have been decreased on that account 9/24 multiplied by $33,367.30=$12,512.74 (see Exhibit 15—Scott), making the total reduction of intrastate revenue on account of the rates complained of $51,802.22 plus $12,512.74=$64,314.96, which subtracted from $207,539.97 leaves $143,225.01, sufficient to pay an annual return of 2.93% upon $4,885,673.00, proportion of value assigned to intrastate freight.

345 The net earnings of the intrastate passenger business over expenses and taxes, $110,657.77 plus $14,063.74, the intrastate passenger proportion of other income=$124,721.51, the total net intrastate passenger income from all sources involving any use of the property valued.

The passenger rates complained of were first applied May 1, 1907. If the same had been in effect during the whole of such fiscal year the intrastate passenger revenue would have been decreased 5/6 of $80,452.00, or $67,043.34, which subtracted from $124,721.51, leaves $57,678.17, sufficient to yield only 1.79% on $3,215,339.00, value assigned to intrastate passenger business.

The total net intrastate income, freight and passenger, all sources, involving any use of the property,

Intrastate freight	$143,225.01
Intrastate passenger	57,678.17
Total	$200,903.18

divided by $4,885,673.00, intrastate freight value plus $3,215,-339.00, intrastate passenger value, or $8,101,012.00=2.47% return divided from total intrastate business on total valuation of property assigned thereto.

Dividing the freight operating expenses and the passenger operating expenses of Minnesota between intrastate and interstate business, respectively, on the straight revenue basis, as aforesaid, does not assign to either class of such intrastate business the full amount of operating expenses which was actually expended in the conduct thereof; and consequently the rates of return on value 2.93% for intrastate freight and 1.79% for intrastate passenger, and 2.47% for total intrastate—freight and passenger—are in excess of the actual returns respectively which would have been earned if the rates complained of had been in effect during the whole of such fiscal year.

346 It appears from the foregoing facts, in these three cases and the Master finds that for the two years next prior to July 1, 1908, in these three cases the revenue derived by the said defendant railway companies and each of them from the property thereof devoted to the public use in the operation of their respective lines of railway and the conduct of their business as common carriers of passenger- and freight within and local to the State of Minnesota, were and that they still are inadequate and insufficient compensation for the property so used and the service rendered, and that the aforesaid rates prescribed by the Orders of the Railroad & Warehouse Commission and the Acts of the legislature were and still are unreasonably low, unjust and confiscatory, and, in the immediate future and until there shall be very material changes in existing conditions not likely soon to occur, they will continue so to be, and that the enforcement of said orders and acts should be enjoined and restrained, as well because they are unreasonably low and confiscatory as because they constitute a burden upon and an interference with and a regulation of interstate commerce, as has been hereinbefore found and determined.

XVIII.

Express Business.

The relation of the express companies, doing business over the Northern Pacific Company's and Great Northern Company's respective lines of railway, to the said respective companies ought not to be passed over without mention. It appears that each railroad company owns all the stock of the express company operating on its line and that the express business is conducted under a contract between the express company and the railway company whereby the latter receives certain fixed compensation for the privileges granted to

the express company, which compensation, of course, is included in the operating revenue of the railway company. But the
347 express company pays very substantial dividends on its capital stock which is received by the railway company but not included by it in such operating revenue, and there is considerable force in defendants' contention that such dividends should be considered as operating revenue. It must be remembered, however, that the business of an express company is in many respects of a very different character to that of a railway company, and its scope is much broader than that of an ordinary common carrier. The business of such express company is to assemble, insure, especially care for and speedily forward to and distribute at point of destination all articles of transportation committed to its charge, including the issuing of express money orders, making collections and other like kinds of service required in commercial affairs. Manifestly such services in general are widely different from those usually performed by a railway company, and suggests the propriety if not the necessity of a separate and independent agent for their performance. Since, however, by ownership of stock the railway company receives the net revenue of the express company, and does not include it as a revenue derived from the operation of its own business, as indeed it is not, it is important that the public who are directly interested in the operating revenue of the railway company, derived as it is from rates paid by them, should be protected against any unfair contract between the railway company and the express company controlled by it whereby the latter may not be accorded full value for services rendered, and the burden of establishing the fairness of such contract whenever called in question is upon the railway company. In the instant cases, however, the evidence does not justify a finding that the railway companies in question do not receive full and fair compensation for services rendered to the express companies, and they are, therefore, not required to include express dividends in their operating revenue.

348 **XIX.**

Conclusion.

The foregoing findings of fact and conclusions of law the Master deems sufficient to cover all the issues necessary for final judgment in these three cases. It is needless to say that they have been thoroughly and carefully tried and with marked ability on behalf of both parties, and nothing has been left undone to fully apprise the Court of every fact necessary to reach a just decision, and to this end counsel on both sides have given their undivided attention in the presentation of testimony and preparation of briefs, and in oral argument, for a period of nearly two and a half years, time as the Master believes well spent in the ultimate determination of questions of great national as well as of great commercial importance.

In addition to the testimony reported to the Court, it has been agreed between the parties that reference might be made to the reports of the several companies annually made to the Railroad &

Warehouse Commission without a transcription thereof and its inclusion with the other testimony herewith reported to the Court, and both parties have made recourse thereto in preparing exhibits in evidence and in submission of the causes for decision.

In obedience to the order of Court the Master submits forms of decree which he recommends to be entered in the three cases, and the same as hereto annexed and made part of this report.

All of which is respectfully submitted,

September 21, 1910.

CHAS. E. OTIS,
Special Master.

349 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
v.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

Decree.

The above entitled cause was submitted to the Master on arguments of Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainant, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendants other than the Railway Companies.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the Bill of Complaint, operate as a burden upon and an interference
350 with, a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the Defendant the Northern Pacific Railway Company, and said Acts and Orders and each of them are confiscatory and constitute an attempt to deprive the Complainant and the said Railway Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railway Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said Acts and Orders are, and each of them is, hereby declared

to be in violation of the Constitution of the United States and are, and each of them is void and of no effect so far as the said Northern Pacific Railway Company, its officers, directors, agents and employés are concerned, and that said Northern Pacific Railway Company, its officers, directors, agents and employés, be and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Orders of September 6, 1906 and May 3, 1907, and that they are, and
351 each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Orders of September 6, 1906 and May 3, 1907.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That said defendants E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud and Adolph Michaud, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of railway, be and they are, and each of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said Acts or Orders, or any of them.

SECTION 5. That the Complainant recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 6. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

352 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,

v.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,

v.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

(Consolidated.)

353 *Decree.*

The above entitled cause was submitted to the Master on arguments by Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainants, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendants other than the Railway Companies.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Orders of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907, respectively, and each of them, recited in the Bill of Complaint, operate as a burden upon and an interference with a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the Defendant the Great Northern Railway Company, and said Acts and Orders and each of them are confiscatory and constitute an attempt to deprive the Complainants and the said Railway Company of their and its property without due process of law and to deny them and it the equal protection of the law, and to impose upon said Railway Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said Acts and Orders are, and each of them is, hereby declared to be in

violation of the Constitution of the United States and are, and each of them is void and of no effect so far as the said Great Northern Railway Company, its officers, directors, agents and employés are concerned, and that said Great Northern Railway Company, its officers, directors, agents and employés, be and they are, and
354 each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Orders of September 6, 1906, and May 3, 1907, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railway Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Orders of Sepember 6, 1906, and May 3, 1907, and that they are, and each of them is further permanently restrained and enjoined from taking any action, step or proceeding against said Railway Company, or any of its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Orders of September 6, 1906, and May 3, 1907.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railway Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That said defendants Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness and S. S. Glarum, and all other shippers of freight over the lines of said Railway Company, and all others making use of said lines of railway, be and they are, and each
355 of them is, hereby permanently enjoined and restrained from instituting or causing to be instituted any action or proceeding for any violation of the said Acts or Orders, or any of them.

SECTION 5. That the Complainants recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 6. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

356 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

WILLIAM SHILLABER, Complainant,

v.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Decree.

The above entitled cause was submitted to the Master on arguments by Messrs. Robert Thorne, Jared How, Pierce Butler and Hale Holden, solicitors on behalf of Complainant, and by Messrs. George T. Simpson, Edward T. Young, Thomas D. O'Brien and Edmund S. Durment, solicitors on behalf of Defendant other than the Railroad Company.

After deliberation it is ordered, adjudged and decreed:

SECTION 1. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Order of the Railroad and Warehouse Commission of the State of Minnesota of September 6, 1906, recited in the Bill of Complaint, operate as a burden upon and an interference with, a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and
357 upon the lines of railway of the Defendant the Minneapolis & St. Louis Railroad Company, and said Acts and Order and each of them are confiscatory and constitute an attempt to deprive the Complainant and the said Railroad Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railroad Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law, and therefore said Acts and Order are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is, void and of no effect so far as the said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés are concerned, and that said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés, be and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said Order of September 6, 1906, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges to the tariffs, rates and charges set forth in said Act.

SECTION 2. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles

E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railroad Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said Order of September 6, 1906, and that they are, and each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railroad Company, or any of
358 & 359 its officers, directors, agents or employés to enforce any fines, penalties or punishments for the violation by them of said Order of September 6, 1906.

SECTION 3. That said George T. Simpson, the Attorney General aforesaid, be and he is hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the said Railroad Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said Acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 4. That the Complainant recover of the Defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, the costs of the suit to be hereafter taxed.

SECTION 5. This decree shall take effect and be in force from and after the — day of ——.

—— ——.

360 In the United States Circuit Court, District of Minnesota, Third Division.

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al., Defendants.

Exception of Complainant to Report of Honorable Charles E. Otis, Special Master.

The Complainant makes the following exceptions to the Report of the Special Master, dated September 21, 1910:

I.

He excepts to that finding and conclusion of the Master appearing upon page 17 (Print. p. 16), being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainant that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906,
361 and May 3, 1907, fixing merchandise or class rates within the State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake work of securing a readjustment of

the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S. 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

He excepts to that finding and conclusion of the Master appearing upon page 19 (Print. p. 18), being Subdivision IV, entitled "Effect of prescribed rates, if confiscatory as to one line of railway and not another," wherein the Master overruled the contention of the complainant that both the acts of the Legislature and the orders of the Railroad and Warehouse Commission, being by their express terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are
362 general in their terms and expressly apply to all railroads operating in the State of Minnesota and certain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and of each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in finding, in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S. 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S., 514, Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, these acts and orders if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable in their terms, unconstitutional and void as to all other companies in the State.

III.

He excepts to that finding and conclusion of the Master appearing on page 67 of the Report (Print. p. 60 in Subdivision VII of said Report), entitled "Real estate valuations as of June 30, 1908," fixing the total value of lands of the Northern Pacific Railway Company in the State of Minnesota as follows:

Terminal properties, St. Paul appraisement of Read, Watson and Taylor, as modified by railroad company	$7,645,100.24
Add 5 per cent for cost of acquisition and consequential damages	382,255.01
Property acquired after appraisement	328,725.69
Minneapolis, appraisement of Elwood, Barney, and Ridgeway, as modified by railway company	4,027,616.17
Add 5 per cent for acquisition and consequential damages	201,380.80
Property acquired after appraisement	227,737.26
Duluth, appraisement of Stryker, Mendenhall and Little	3,602,443.43
Add 25 per cent for railway value, cost of acquisition and consequential damages	900,610.85
Total value of terminals	17,315,869.45
Lands outside of terminals	3,708,693.45
Grand Total	21,024,562.90

The evidence contained in the testimony of the witness Thomas Cooper (Record pp. 122, 420, 1059 and 3040) together with the exhibits offered by said witness, and the evidence of the witnesses John D. Stryker (Record p. 454, Comp. Ex. 21—Stryker), L. B. Elwood (Record p-. 480, 1024, Comp. Ex. 22—Elwood), John J. Watson (Record p. 508, Comp. Ex. 23—Watson), Fred E. Barney (Record p. 1092), William C. Read (Record p. 1116), Oscar L. Taylor (Record p. 1420), Howard Elliott (Record p. 1217), together with the evidence of Charles Hayden (Great Northern record, pp. 162 to 358 inclusive) and of the said witnesses Taylor, Elwood, Stryker, Read, Watson and Barney contained in the Great Northern Record, the evidence of James J. Hill and John F. Stevens, each and
364 all establish, without competent proof to the contrary, that the fair present value as of April 30, 1908, of the right of way and terminal lands of the Northern Pacific Railway Company in the State of Minnesota is not less than the following sums:

St. Paul Terminals	$9,907,889.34
Minneapolis Terminals	5,292,819.22
Duluth Terminals	5,155,203.75
Right of Way and Station Grounds outside of above terminals	4,944,924.60
Total	25,300,836.91

(See Comp. Ex. 9—Cooper, Revised.)

The Master erred in reducing the values of said lands and terminals as above shown below said sum of $25,300,836.91, for the reason that having rejected the testimony offered by the defendants relating to the subject of land values of said Railway Company, the undisputed proof justified and required a finding of said sum of $25,300,836.91, and there was in the case no relevant or competent proof to the contrary. The evidence shows, without contradiction, that these lands are each and all devoted to railroad use, and the rule of law requires that they be valued according to the highest, reasonable use for which they are adapted; and the evidence offered by the Complainant above referred to proves that the values placed upon them by Complainant, and the proof offered by him in that respect, are just and reasonable, having reference to such railroad use.

The Master erred, without testimony or evidence, in arbitrarily adding but five per cent to the appraisement of the terminals in St. Paul and Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof of the witness Thomas Cooper (Record pp. 211, etc.) shows that in considering the fair value of the right of way and terminal lands of the
365 Northern Pacific Railway Company, five per cent added to such appraisement is unjustly and unreasonably low, and that to fairly state the value of said lands for railroad purposes separate consideration of the different parcels of said land was necessary, and a varying range of percentages, according to location and the particular circumstances surrounding each parcel should have been used, ranging from 5 to 40 per cent, as testified to and fully explained by said witness Cooper. The arbitrary addition of but 5 per cent to all of said lands was without any support whatsoever in the evidence, and the Master erred in limiting the percentage addition to the appraised value of said lands to 5 per cent as aforesaid and in not accepting the amounts placed upon said lands as testified to by the witness Cooper after the revision of the exhibits offered by him. (See record, pp. 1059 to 1066 inclusive, Comp. Ex. 29—Cooper and Comp. Ex. 30—Cooper.) The evidence of the witness Cooper, supported by the testimony of the witnesses and by the exhibits hereinbefore referred to, fairly shows the value of said lands, based upon their availability for railroad use, and the Master erred in reducing said figures below that testified to by said witness and shown by evidence contained in said exhibits. For like reason, the Master erred in adding an arbitrary addition of but 25 per cent to the appraisement of the lands of the Northern Pacific Company in the City of Duluth, and in refusing to accept the figures placed thereon by the witnesses above referred to.

IV.

He excepts to that finding and conclusion of the Master on p. 69 of the Report (Print. p. 62) wherein the Master finds as follows:

"He is of opinion that the reductions made from such valuations by the Northern Pacific Company as to its properties in St.
366 Paul and Minneapolis were clearly justified by conditions differentiating the properties upon which such reductions

were made from other properties valued by the appraisers and which were not fully appreciated by them. They were much farther removed from the business centers of the cities and partook more of the nature of suburban property."

The witness Cooper (Record, pp. 1059 to 1066 inclusive) testified that the reductions made by him in the first place from the valuations put upon the terminal lands in St. Paul and Minneapolis of the Northern Pacific Company by the real estate appraisers were not justified and were made through misapprehension of the elements entering into the fair value of said lands; that upon further consideration, supported by the examination and current sales of contiguous properties, he was convinced that the figures placed upon said lands by the real estate appraisers aforesaid were fair and reasonably low and should not have been by him reduced. The record contains no evidence to the contrary, and the Master erred in not accepting said testimony and the values as originally fixed by the real estate appraisers.

V.

He excepts to that finding and conclusion of the Master found on page 68 (Print. p. 61), under Subdivision VII of said Report, wherein the Master without warrant in the evidence, reduced the value of the lands of said company outside of the three terminals aforesaid, from $4,944,924.60 to $3,708,693.45 or a difference of $1,236,231.15. The Master, without evidence, arbitrarily reduced the value placed upon said outside right of way lands and station grounds by the witnesses offered by the Complainant to an amount equal to 75 per cent thereof, whereas the proof, without contradiction, establishes that the said value of $4,944,924.60 was the minimum value
367 which, upon evidence, should have been placed upon said outside lands. (Evidence of Thomas Cooper, and Exs. 9, 10, 75, 76 and 77—Cooper.)

VI.

He excepts to that finding and conclusion of the Master found on p. 70 (Print. p. 63), under Subdivision VII aforesaid, wherein the Master found and declared that the appraisement made by the real estate experts of the St. Paul, Minneapolis and Duluth terminals as reduced by the witness Thomas Cooper, in the first instance, and with an addition of only 5 per cent as to St. Paul and Minneapolis and only 25 per cent as to Duluth to cover the cost of acquisition and consequential damages, should be accepted as full railroad value of said terminal properties, for the reason that the clear and undisputed weight of the evidence shows that the modification of the values placed upon said terminal lands of the Northern Pacific Railway Company by said real estate experts was not warranted, and for the further reason that the proof establishes that the addition of the various percentages according to location and condition, ranging from 5 to 40 per cent as made by the witness Cooper to the appraisement of said real estate experts, was the minimum that should have

been added to determine the value of said lands, based upon railroad use, and for the further reason that under the law properly applicable thereto, the Complainant is entitled to have said terminal lands valued as an entirety according to their fair present value for railroad uses and purposes, measured by their availability for such purposes, and, when so valued, the appraisement placed thereon by Complainant's proof hereinbefore specifically referred to is the minimum value that can fairly be placed thereon.

368 VII.

He excepts to that finding and conclusion of the Master found on p. 77 (Print. p. 69) as follows:

Item 4, Tunnels (Northern Pacific case), amount allowed $253,250.

The Master erred in reducing the amount claimed in that regard by the Complainant, which is $358,363, and in disallowing anything for the Seventh Street Viaduct, so-called, in the City of St. Paul, for the reason that there is no substantial difference between this structure and overhead bridges and like structures which the company will be compelled to reconstruct and maintain and which will probably require repairs, renewals and replacements. The Master erred in assuming that this structure will not require repairs or replacements, and inasmuch as the evidence shows, without dispute, that the City of St. Paul filled Seventh Street to a level above that of the railroad track, creating a permanent condition which will at all times require the maintenance of a tunnel through which the railway lines may pass, the amount claimed on that account should have been allowed, and the Master erred in arbitrarily disallowing it.

VIII.

He excepts to that finding and conclusion of the Master found on p. 79 (Print. p. 70) as follows:

Item 6, Ballast, Northern Pacific case, amount allowed $1,960,969.

The Complainant established by the undisputed proof that the ballast in the Northern Pacific lines in the State of Minnesota would reasonably cost, to presently reproduce, the sum of $2,084,258.49.

369 The Master erred in reducing this amount by applying a price of but 62 cents per cubic yard to the yardage involved instead of accepting the figure of 66 cents per cubic yard, as fully testified to and supported by the evidence offered by the Complainant. Comp. Ex. 83—Darling, showing actual cost of ballasting done by the Northern Pacific during the years 1906 to 1908, shows a much higher price than 66 cents per cubic yard, and the Master arbitrarily disregarded and ignored controlling evidence in reducing such figure to 62 cents without competent proof authorizing or justifying that to be done.

IX.

He excepts to that finding and conclusion of the Master found on p. 83 (Print. p. 74) as follows:

Item 11, Bridges, Trestles and Culverts, Northern Pacific Case, amount allowed, $3,586.053.

The Complainant established by competent proof, undisputed, that there should have been allowed for this item $3,884,745.72. The testimony of the witness Darling, and Comp. Ex. 86—Darling, establishes that the unit prices used by the witness Darling are lower than any of said bridges could have been constructed for on April 30, 1908. The Master erred in reducing said figures in any amount whatsoever, and erred in accepting the mere opinion of the State's engineer, when it appears by his own testimony that he had had no experience in the matter of the construction of bridges qualifying him to express an opinion entitled to any weight as against actual current costs of bridges as shown by said Ex. 86—Darling. The actual average prices per unit shown in Comp. Ex. 86—Darling establish tthe figures claimed by Complainant beyond dispute, and the Master erred in arbitrarily and without justification of any sort in the evidence, allowing but two-thirds of the difference between the figures of the State and of the Complainant.

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X.

He excepts to that finding and conclusion of the Master found on p. 87 of the Report (Print, p. 77) as follows:

Item 37, Contingencies, Northern Pacific case, amount allowed, $3,710,479.

The amount claimed by Complainant is $6,985,585.80, being ten per cent of all items embraced in the schedule, showing the cost of reproduction to April 30, 1908, and the testimony offered by the witnesses Darling, Elliott, Berry, Hill, Stevens and Hogeland clearly supports this claim.

The Master erred in allowing but five per cent on items 1 to 34 of the schedules shown on pp. 91 and 92 of the Report (Print. pp. 81 and 82) for the reason that the great weight of the testimony shows that the allowance is wholly insufficient, and the evidence offered by the witness Morgan for the State on that subject shows that he was without any sufficient knowledge or experience to justify the expression of an opinion, and the proof offered by the Complainant required a finding of ten per cent to cover said item.

XI.

He excepts to that finding and conclusion of the Master found on p. 88 of the Report (Print. p. 78) as follows:

Item 39, Interest during Construction, Northern Pacific Case, amount allowed at $7,386,215.

The Complainant established by competent proof that this item should have been allowed at $7,768,868.17. The Master disallowed any item of interest on contingencies and erred in that regard, for the reason that if it is proper to allow contingencies, it is also proper to allow interest on that amount. The amount allowed for Contingencies is because that sum is necessary and will be ex-

371 pended, money to meet contingencies must be furnished, and, therefore, interest thereon should have been allowed. Because

of the erroneous and arbitrary reductions in various of the items in the schedule 1 to 36 inclusive shown on pp. 91 and 92 of the Report (Print. pp. 81 and 82) the amount of interest computed and allowed by the Master is also unreasonably and unjustly low; and the Master erred not only in reducing the various items in said schedule, as hereinbefore complained of, but also in refusing to allow any percentage for interest on account of the sum claimed by the Complainant for contingencies.

The Master erred in allowing the rate of interest at 4% only, or at any rate less than 6%, for the reason that under the testimony of the witnesses Elliott and Berry in the Northern Pacific Case, and Hogeland and Hill in the Great Northern Case, it was established that 6% is a just and reasonable rate of interest. The Master reduced the rate of interest to 4% without any proof in the record to support his statement that it would be a fair rate at which money could be procured for construction purposes.

The Master erred in reducing the rate from 6% to 4% by reference to Complainant's Exhibit No. 2 in the Northern Pacific Case, for the reason that all of the evidence of the witnesses aforesaid shows that 4% is unreasonably low, and less than money could be procured for during the period of construction. In reducing the rate of interest from 6% to 4% the Master in effect found that during the period necessary for the construction of the lines of the Northern Pacific Company in the State of Minnesota, the money necessary for that purpose could be borrowed at par with 4% interest, whereas the proof established by the testimony of the witnesses aforesaid is to the effect that such money could not be borrowed in any event at less than 6% interest, and it follows, therefore, that an allow-
372 ance of interest at the rate of 6% should have been made, and the Master erred in reducing such rate arbitrarily to 4%. Testimony of Hogeland page 52, Hill page 1269.

XII.

He except for each and every of the reasons hereinbefore set forth to the action of the Master in reducing the amount shown in the testimony and exhibits offered by the Complainant comprising the cost of reproducing the Northern Pacific lines in the State of Minnesota as of April 30, 1908, of $101,158,583.13 to $90,204,545 as shown in the schedule contained in the Master's Report on pp. 91 and 92 (Print. pp. 81 and 82).

XIII.

He excepts to that finding and conclusion of the Master found on p. 97 thereof (Print. p. 86) wherein in considering the subject of depreciation the Master used the following language:

"There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies.

No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making."

The Master erred in including the working capital, so-called, as an offset to the depreciation for the reason that the undisputed testimony by the witnesses Hill, Elliott, Stevens, Berry, Hogeland and Darling in the Great Northern and Northern Pacific cases established beyond controversy that the appreciation of roadbed, embankments,
slopes, etc., more than outweighs the minor elements of
373 depreciation which are not fully compensated for from time to time by maintenance and repairs, and the master should have found that such depreciation as may exist was more than compensated for by the elements of value arising from appreciation in value as aforesaid, and erred in including working capital as an additional offset to such minor depreciation. Working capital should have been added independently to the present cost of reproduction of the physical property and included as an element making up the present value of the properties in this State, and not less than Minnesota's mileage proportion of the sum of $15,000,000 should have been included. (Testimony Howard Elliott, Record p. 1245.)

XIV.

He excepts to those findings and conclusions of the Master appearing on pp. 100 to 102 inclusive (Print. pp. 89 to 90 inclusive) wherein the Master, after ascertaining from the proof offered from the books of the Northern Pacific Railway Company and its predecessors that the investment cost of the system was the sum of $369,252,755, finds that this amount should be reduced by the several items stated in said finding, aggregating $57,009,200, leaving a balance of only $312,243,555, for the reason that the Master erred in disallowing each and every such item. This exception is intended to be tantamount to a separate exception with regard to the disallowance of each such item.

XV.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) of the Report, wherein the Master erroneously held that good-will and corporate franchises are not proper elements of value.

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XVI.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) wherein the Master erroneously held that patronage and good-will of the public are not elements of value to be considered.

XVII.

He excepts to that finding and conclusion of the Master found on p. 106 (Print. p. 94) wherein, after finding and recognizing as

matters of value the existence in these properties of knowledge derived from experience, adaptation to the needs of the public and readiness to serve, the same were only taken into account as an offset to depreciation arising from use and weather-stress and were not assigned any values in addition thereto. Such depreciation as exists in said properties over and above maintenance and repair is shown by undisputed testimony to be more than offset by appreciation of roadbed, and the Master erred in including as an offset to depreciation the aforesaid elements of value comprehended within the term "going concern," and in not assigning thereto a fair and reasonable sum representing the added value in said properties over and above the bare value of the physical items comprehended in said property. The Master found in subdivisions numbered 11 and 12, pp. 107 to 110 inclusive (Print. pp. 94 to 97 inclusive), that the lines of the Northern Pacific Railway are efficiently, economically and honestly managed and located and constructed pursuant to public demand, and further found that the location, connections, character of traffic and prospects of the future growth in business, said properties contain large elements of so-called intangible values over and above the mere cost of reproduction of the physical items comprising said properties, and having so found, erred in failing to assign thereto a fair and reasonable amount covering said values over and above the cost of reproduction.

375 XVIII.

He excepts to that finding and conclusion of the Master found on p. 110 of the Report (Print. p. 97), under Subdivision XIII of said Report, wherein, after finding from the testimony and proof in this case that the cost of reproduction of the entire Northern Pacific system, after certain deductions as stated in said report, is the sum of $486,738,161, erroneously assumed to reduce that amount by an arbitrary percentage reduction of seven per cent, placing the valuation of said system at $452,666,489. The Master erred in thus reducing the value of the Northern Pacific system for the reason that there was no testimony justifying said reduction as to the properties of said Company aforesaid, outside of the State of Minnesota, and as hereinbefore shown the reductions made by the Master in the values of property within the State of Minnesota were erroneous and unjust. As to the property outside of the State of Minnesota, the Master arbitrarily and without any support in the testimony reduced the value of said system seven per cent, or a total of $34,071,672.

XIX.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, State and Interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning on p. 127 (Print. p. 112) of the Report of the Master, the value of the

property of the Northern Pacific Railway Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and, when so divided, the results have been applied by the Master to ascertain, by the computations in said Report employed, to determine the net
376 return from the intrastate passenger and freight business of said Company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainant excepts to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and excepts, for the same reasons, to the proportionate valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainant. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainant excepts to each and every determination and conclusion reported by said Master in any manner derived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

XX.

He excepts to that finding and conclusion of the Master found at p. 122 of the Report (Print. p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found." For the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found—or upon the full value of the property as claimed by
377 Complainant—will not be sufficient to yield to Complainant and said Company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

XXI.

He excepts to the Master's finding and determination found at p. 133 of the Report (Print. p. 117) as follows:

"The Master finds from the weight of testimony that the cost per ton mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one."

For the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the

Master, fixing the cost of doing intrastate freight business lower than is warranted by any evidence in the case.

And he excepts to the failure of the Master to find that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is the cost of doing the interstate freight business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence. (Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Gt. N. Record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Gt. N. Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Gt. N. Record, p. 305, etc.; James N. Tittemore, M. & St. L. Record, p. 780, etc.)

XXII.

He excepts to that finding and conclusion of the Master found on p. 133 (Print. p. 117) as follows:

"He also finds from the evidence that the cost per passenger-
378 mile in the State passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota,"

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master in fixing the cost of doing intrastate passenger business lower than is warranted by any evidence in the case. And he excepts to the failure of the Master to find that the cost per passenger mile of doing intrastate passenger business in Minnesota is at least twenty-five per cent greater than the cost of doing interstate passenger business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence.

(Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Gt. N. Record, p. 1078, 1133, Ex. 53.—Ward; William B. Doddridge, Gt. N. Record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Gt. N. Record, p. 305, etc.; James N. Tittemore, M. & St. L. Record, p. 780, etc.)

XXIII.

He excepts to each and every finding, determination and conclusion of the Master to be found in Subdivision XVII commencing at p. 127 of said Report (Print. p. 112), entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," dependent upon or derived from the finding hereinbefore excepted to at No. XXI, to the effect that the cost per ton mile of doing intrastate freight business in Minnesota is at least two and one-half times as much as is such cost of doing the interstate freight business in Minnesota—or the finding last above at No. XXII hereof excepted to, to the effect that the cost per passenger per mile in the state passenger business is at least fifteen
per cent greater than such cost in the interstate passenger
379 business in Minnesota, for the reasons stated in such exceptions, respectively It is the intention that this exception

shall be tantamount to exceptions stated separately to each and every determination and conclusion of the Master based upon either of the findings so as aforesaid excepted to, and excepts to the failure and refusal of the Master to find and determine facts which would be derived and follow from findings in substance as follows, viz: (1), that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is such cost in doing the interstate freight business in Minnesota, and (2), that the cost per passenger per mile in the state passenger business in Minnesota is at least twenty-five per cent greater than such cost in the intrastate passenger business in Minnesota.

On the valuation found by the Master and apportioned between the freight and passenger business—and intrastate and interstate of each—on the basis employed by the Master in his Report, and on the assumption that all of the other facts found by the Master are true (except the factors of extra cost), if the last mentioned factors of extra cost of the intrastate freight business and intrastate passenger business respectively be used in the same manner as were the extra cost factors used by the Master in his Report, results will be produced substantially as indicated in the following table, to wit:

(Here follows table, marked p. 379½.)

380 XXIV.

He excepts to the action of the Master in including in the item "Income applicable to Valuation" appearing on the table following p. 143 of the Report (Print. p. 127), and elsewhere in said Report, any portion of the revenue derived from "net rentals received," "hire of equipment received" and "outside operations," and the failure of the Master to assign any portion of the total value of the property in the State to the items so claimed by Complainant to have been erroneously included, for the reason that the items so erroneously included were "net items" and that if the value of said property be apportioned or assigned on the gross revenue basis directly to intrastate freight, interstate freight, miscellaneous freight, intrastate passenger, interstate passenger, miscellaneous passenger, "outside operations" (taking "gross" instead of "net") "rentals received and hire of equipment," the rate of return on property used in the intrastate freight business would be substantially less than that stated in the Report, and in like manner, the rate of return on the intrastate passenger business would be substantially less than as found by the Master. For the reason aforesaid, the Master erred in stating the computations, tables and results of the business of said Company, freight and passenger, under the rates in question in the State of Minnesota as they appear in said Report, and erred in failing to state the proper division of the property as aforesaid to the various classes of revenue.

Wherefore the Complainant prays that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

Dated October 20, 1910.

381 Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

382 In the United States Circuit Court, District of Minnesota
(Third Division.)

EMMA B. KENNEDY et al., Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY et al., Defendants.

Consolidated.

Exceptions by Complainants to Report of Honorable Charles E. Otis, Special Master.

The Complainants make the following exceptions to the Report of the Special Master, dated September 21, 1910:

383 I.

They except to that finding and conclusion of the Master appearing upon page 17 (Print, p. 16), being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainants that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906, and May 3, 1907, fixing merchandise or class rates within the State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake the work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class-rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S., 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

They except to that finding and conclusion of the Master appearing upon page 19 (Print, p. 18), being Subdivision IV, en-
384 titled "Effect of prescribed rates, if confiscatory as to one line of railway and not another," wherein the Master overruled the contention of the Complainants that both the acts of the

Legislature and the orders of the Railroad & Warehouse Commission, being by their express terms of general application to all railroads doing business in the State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating in the State of Minnesota, and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S., 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S. 514, Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, these acts and orders, if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable, in their terms, unconstitutional and void as to all other companies in the State.

III.

They except to that finding and conclusion of the Master appearing on page 68 (Print, p. 61) of the Report, under sub-
385 division VII, entitled "Real Estate Valuations as of June 30, 1908," fixing the total value of lands of the Great Northern Railway Company in the State of Minnesota as follows:

St. Paul, appraisement of Read, Watson and Taylor.	$6,433,348.00
Add 5 per cent for cost of acquisition and consequential damages	321,667.40
Minneapolis, appraisement of Elwood, Barney and Ridgeway	11,619,765.00
Add 5 per cent for cost of acquisition and consequential damages	580,968.15
Duluth, appraisement of Stryker, Mendenhall and Little	713,280.00
Add 25 per cent for railroad value, cost of acquisition and consequential damages	178,320.00
Total value of terminals	19,847,366.56
Land outside of terminals	5,325,284.25
Grand total	25,172,650.80

The testimony contained in the testimony of the witnesses Charles Hayden (Record, pp. 162 to 358 inclusive, Complainant's Ex. 9—Hayden, Complainant's Ex. 10—Hayden), Oscar L. Taylor (Record, p. 359, Complainant's Ex. 11—Taylor), Lester B. Elwood (Record, p. 554, Complainant's Ex. 15—Elwood), John D. Stryker (Record, p. 592, Complainant's Ex. 17—Stryker), William C. Read (Record, p. 602), John J. Watson (Record p. 617), James J. Hill (Record, p. 1232), John F. Stevens (Record, p. 408), Thomas Cooper (N. P. Record, pp. 122, 420, 1059 and 3040), Howard Elliott (N. P. Record, p. 1217), together with the exhibits offered in the Northern Pacific case by the witness Cooper aforesaid, and the evidence in the Northern Pacific case of said witnesses Stryker, Elwood, Watson, Read, Fred. E. Barney (N. P. Record, p. 1092), and Oscar L.
386 Taylor (N. P. Record, p. 1420), each and all establish, without proof to the contrary, that the fair present value as of June 30, 1908, of the right way and terminal lands of the Great Norther Railway Company in the State of Minnesota is not less than the following sums:

St. Paul terminals	$8,041,686.00
Minneapolis treminals	14,524,704.00
Duluth terminals	969,152.00
Right of way and station grounds outside of above terminals	7,100,379.00
Total	$30,635,921.00

(See Comp. Ex. 9—Hayden).

The Master erred in reducing the values of said lands and terminals as above shown, below the said sum of $30,635,921 for the reason that having rejected the testimony offered by the defendants relating to the subject of land values of said Railway Company, the undisputed proof justified and required a finding of said sum of $30,635,921, and there was in the case no relevant or competent proof to the contrary. The evidence shows without contradiction that these lands are each and all devoted to railroad use, and the rule of law requires that they be valued according to the highest reasonable use for which they are adapted, and the evidence offered by the Complainants above referred to proves that the values placed upon them by Complainants, and the proof offered by them in that respect, are just and reasonable reference to such railroad use. The Master erred, without testimony or evidence, in arbitrarily adding but five per cent to the appraisement of the terminals in St. Paul and Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof of the witness Charles Hayden (Record, pp. 177, etc.) shows that 25 per cent added thereto was just and proper to make up the fair present value of said lands, in view of their adaptability for railroad purposes, and erred in fail-
387 ing to find 25 per cent of such appraisement in addition thereto for cost of acquisition and consequential damages instead of five per cent.

IV.

They except to that finding and conclusion of the Master on page 68 of the Report (Print, p. 61) under Subdivision VII as aforesaid, wherein the Master finds the value of the terminals of the Great Northern Railway Company in Duluth as follows:

Appraisement	$713,280.00
Add 25 per cent for railroad value cost of acquisition and consequential damages	178,320.00
Total	$891,600.00

for the reason that the Master erred in failing to add to the appraisement of the dock property of said company at Duluth by Messrs. Stryker, Mendenhall and Little the sum of $25,000 and in reducing the valuation of the Rice's Point property and the Michigan Street property below that fixed by the witness Hayden in his testimony aforesaid, whereby the Master erroneously and without warrant in the evidence reduced the valuation of said lands in the City of Duluth $77,552. (Record, p. 172.)

V.

They except to that finding and conclusion of the Master found on page 68 (Print, p. 61) under said Subdivision VII as aforesaid, wherein the Master, without warrant in the evidence, reduced the value of the lands of said company outside of the three terminals aforesaid from $7,100,379 to $5,325,284.25, or a difference of $1,775,094.75. The Master without evidence reduced the value placed upon said outside right-of-way lands and station grounds by
388 the witnesses offered by the Complainants, to 75 per cent thereof, whereas the proof, without contradiction, establishes that the said value of $7,100,379 was the minimum value, which upon the evidence should have been placed upon said outside lands. (Testimony of Hayden, p. 162 et seq.)

VI.

They except to that finding and conclusion of the Master found upon page 70 (Print, p. 63) under Subdivision VII aforesaid, wherein the Master found and declared that the appraisement made by the real estate experts of the St. Paul and Minneapolis terminals with an addition of five per cent to cover cost of acquisition and consequential damages, should be accepted as full railroad value of said terminal properties, for the reason that the proof establishes that an addition of 25 per cent to the appraisement of said real estate experts was the minimum that should have been added to determine the value of said lands based upon railroad use, and for the further reason that under the rule of law properly applicable thereto the Complainants are entitled to have said terminal lands valued as an entirety according to their fair present value for railroad uses and purposes, measured by their availability for such purposes, and,

when so valued, the appraisement placed thereon by the Complainants' proof, hereinbefore specifically referred to, is the minimum of value that can fairly be placed thereon. (Testimony of Hayden, p. 162 et seq.)

VII.

They except to that finding and conclusion of the Master on p. 75 (Print p. 68) as follows:

Item 2 (Great Northern case), Grading, Clearing and Grubbing, $21,685,802,

for the reason that the Master erred in excluding the following items as stated in said report:

389	Abandoned right of way.....	$135,876.00
	Extra work not of record.....	333,775.00
	Total	$469,651.00

The yardage embraced in abandoned right of way was fully explained and supported by the testimony of the witness A. H. Hogeland as only that yardage necessarily handled in the most economical construction of the lines as they presently exist and includes no yardage of right of way of abandoned lines, and therefore the cost of said yardage was erroneously excluded by the Master. The yardage for extra work not of record as disallowed by the Master includes only a portion of the yardage thus computed and shown by the witness Hogeland, and under the evidence, the Master erred in dissallowing any portion of said yardage so computed and claimed by said witness. The proof establishes, without contradiction, that the total yardage embraced in extra work not of record, as claimed by the testimony of the witness Hogeland and shown in Complainant's Ex. 3 — Hogeland, and further in the testimony of the witnesses James J. Hill and John F. Stevens, is far less than the actual number of yards moved and put into the roadbed of the lines as they now exist, and there exists on the record no reason nor ground for the action of the Master in arbitrarily disallowing any portion of this yardage. (Testimony of Hogeland, p. 1584, as to abandoned lines; p. 1570 et seq. as to extra work not on record.)

VIII.

They except to that finding and conclusion of the Master as shown on page 78 (Print, p. 70) as follows:

Item 5 (Great Northern case), Cross Ties and Switch Ties, $5,460,809,

for the reason that the proof contained in the testimony of the witness Hogeland in Exs. 2—Hogeland, 13—Hogeland and
390 50—Hogeland establishes that the average price of 70.5 cents per tie, testified to and shown in item 5 of Ex. 2—Hogeland, is below the actual average current cost of track-ties for the year

ending June 30, 1908, or for several years prior thereto. The Master erred in fixing the value of the ties in the Great Northern lines in Minnesota by the figure testified to and shown in the exhibits in the Northern Pacific case, and upon the proof in the Great Northern case erred in fixing the value of its ties at 67.2 cents and erred in not fixing the same at 70.5.

IX.

They except to that finding and conclusion of the Master found on p. 79 (Print, p. 71) as follows:

Item 7 (Great Northern case), Rails, $9,053,977.00.

The Master erred in reducing the price of rails as testified to by the witness Hogeland and shown in his Ex. 2, Item No. 7, from $30.75 per ton to $30.25 per ton. The proof in the Great Northern case established by actual current cost that $30.75 was a just and reasonable figure, and there is no warrant in the record to justify the reduction thereof to $30.25. (Testimoney of Hogeland. p. 27 and p. 116.)

X.

They except to that finding and conclusion of the Master found on p. 81. (Print, p. 73) as follows:

Item 10 (Great Northern case), Track-laying and Surfacing, $2,207,753.

The testimony of the witness Hogeland (Comp. Ex. 7 corrected—Hogeland), together with the testimony of the witnesses James J. Hill and John F. Stevens establishes that the amount claimed in item 10 of Hogeland's Ex. 2 of $835 per mile is fair, just and reasonable.

391 Complainant's Ex. 7 corrected—Hogeland, showing the average actual cost of track-laying and surfacing for ten years, 1898 to 1908, to be $851 per mile justifies the figure claimed of $835 per mile for the year ending June 30, 1908, and the reduction made by the Master of $75 per mile for the cost of track-laying and surfacing of the Great Northern lines in the State of Minnesota is without warrant in the evidence and has no support therein. The proof offered by the State on that subject is shown by the report to be of no value and is rejected, and in the absence of other proof, that offered by the Complainants from the books of the Railway Company, showing actual current cost, was rejected without just cause. The Master erred in accepting the figure of $760 per mile shown in the Northern Pacific case, for the reason that the actuel current cost as shown by Complainant's Ex. 7 corrected—Hogeland, on the Great Northern lines,is more, and the proof in the Northern Pacific case, as well as in the Great Northern case, shows that the average figure of $760 per mile, stated in the Northern Pacific case, is unreasonably low and that being true, it was unjust to make use of that figure in reducing the amount that should have been justly allowed in the Great Northern case. (See com. Ex. 84—Darling, N. P. case. Testimony of Stevens, p. 443.)

XI.

They except to that finding and conclusion of the Master found on p. 84 (Print, p. 75) as follows:

Item 11 (Great Northern case), Bridges, Trestles and Culverts, $6,664,729.

The difference between the amount claimed in Hogeland's Ex. 2, item 11, of $6,814,201, and that allowed by the Master as above, is $149,472. The testimony of the witness Hogeland (Ex. 2, Item 11) and that of the witness John F. Stevens establishes that the amount of this item as claimed by the Great Northern figures should have been allowed, being based on current cost as of June 30, 1908,
392 as shown by the records of said company, and there was no warrant in the evidence for the Master to arbitrarily compromise the difference between the State figures and the Complaint's figures by allowing the Complainants but two-thirds of that difference. The proof showed that the figures put forth by the State were not supported by credible or competent proof, whereas the figures testified to by the witness Hogeland were amply justified from actual current experience. (Testimony of Hogeland, p. 29. Comp. Ex. 86—Darling, N. P. case).

XII.

They except to that finding and conclusion of the Master found on p. 86 (Print, p. 77) as follows:

Item 30, Engineering, Superintendence and Legal Expenses (Great Northern case), $3,867,040.

This item was arrived at by the Master by taking 4½ per cent on items 1 to 28 inclusive in the schedules of said items in evidence as modified and found by the Master and is less than the amount shown in Complainant's Ex. 2—Hogeland by $498,309. The Master erred in applying the 4½ per cent to items 1 to 28 inclusive and in excluding item 29, Contingencies. Because of the erroneous reductions in the various items 1 to 28 inclusive as hereinbefore complained of, as well as because of the exclusion of said item 29, Contingencies, from said computation, the allowance by the Master for item 30, Engineering, Superintendence and Legal Expenses, is unreasonably low. The great weight of the testimony in this case proves and establishes that 4½ per cent on items 1 to 29 inclusive is low and in no way excessive, and the Master erred, in view of the state of the proof, in reducing the said amount, as claimed. The testimony of the witnesses Hogeland, James J. Hill and John F. Stevens establishes that the amount as claimed is fair; and
393 the action of the Master in reducing it is arbitrary and unsupported by any relevant or competent proof. (Testimony of Hogeland, p. 46.)

XIII.

They except to that finding and conclusion of the Master found on p. 88 (Print, p. 78) as follows:

Item 39 (Great Northern case), Interest during construction, $17,880,150.

The amount claimed by Complainants as shown in Complainant's Ex. 2—Hogeland, and supported by evidence of the witnesses Hogeland, Hill and Stevens, and in the Northern Pacific record by the witnesses Elliott and Berry, is $27,611,471, or a difference of $9,731,321. The Master erred in reducing the rate of interest from six per cent to four per cent, for the reason that under the testimony of the witnesses Hogeland, Hill, Elliott and Berry, it is established that six per cent is a just and reasonable rate. The Master reduced the rate to four per cent without any proof in the record to support his statement that it would be a fair rate at which money could be procured for construction purposes. The Master erred in reducing the rate from six to four per cent by reference to the evidence contained in the exhibits in the Northern Pacific case, for the reason that all of the evidence of the witnesses aforesaid shows that four per cent is unreasonably low and less than money could be procured for during the period of construction. The Master erred in refusing to allow interest on item 29, Contingencies, and on item 37, General Expenses, for the reason that if those items are proper to be allowed, as they are, it is because those items and the amounts comprehended in them must be expended from time to time during the progress of the work of construction, and therefore the funds necessary therefor must be furnished and interest thereon must be paid during construction. In reducing the rate of interest from six per cent
394 to four per cent the Master in effect found that during the period of eight years, agreed by the witnesses on both sides as necessary for the reproduction of the lines of the Great Northern in the State of Minnesota, the money necessary for that purpose could be procured at par at four per cent, whereas the proof established by the testimony of the witnesses aforesaid is to the effect that interest computed at the rate of six per cent for an average period of four years on all items excepting equipment and at six per cent for an average period of two years on equipment items, is less than could be accomplished, and therefore it follows that an allowance of interest on the basis aforesaid of six per cent should have been allowed, and the Master erred in arbitrarily reducing the rate to four per cent. (Testimony of Hogeland, p. 52, Hill, p. 1269.)

XIV.

They except to that finding and conclusion of the Master found on page 93 (Print, pp. 82 to 84 inclusive) wherein the Master disallowed Complainant's claim No. 37 in Complainant's Ex. 2—Hogeland, entitled General Expenses 1½ per cent, $1,849,841. The testimony of the witnesses Hogeland, Hill and Stevens, and Elliott, Darling and Berry aforesaid, establishes that during the period of construction money is required to be furnished for general expenses to cover the general administration of the property during the construction period, stationery, insurance, taxes, commissions, organization expenses, accounting and purchasing and treasury departments, and all other expenses that are necessary, and which would not be embraced within engineering, superintendence or legal ex-

penses. The item as claimed covers the cost of the general administration and other items of expense as mentioned for eight years, for which, by the Master's findings, nothing has been allowed. The undisputed proof is that such items of expense are necessary
395 to be incurred, and the Master was without warrant in the record in ignoring and disallowing this item.

XV.

They except for each and every of the reasons hereinbefore set forth to the action of the Master in reducing the amount shown in the testimony and exhibits offered by the Complainants, comprising the cost of reproducing the Great Northern lines in the State of Minnesota as of June 30, 1908, of $157,348,856, to $138,425,291, as shown in the schedule contained in the Master's Report on pp. 93 to 94 inclusive (Print, pp. 82-84).

XVI.

They except to that finding and conclusion of the Master found on p. 97 thereof (Print, p. 86) wherein in considering the subject of depreciation the Master used the following language:

"There is another element which may properly be considered in connection with the question of depreciation and as an offset to it. It is necessary that the companies should have on call a large sum of money for the conduct of the business and to meet emergencies. No doubt a large part of it draws a low rate of interest while on deposit in bank, but it must be that very considerable amounts are idle and unproductive and must be considered as an element of value in the matter of rate-making."

The Master erred in including the working capital, so-called, as an offset to the depreciation for the reason that the undisputed testimony by the witnesses Hill, Elliott, Stevens, Berry, Hogeland and Darling in the Great Northern and Northern Pacific cases establishes beyond controversy that the appreciation of roadbed, embankments, slopes, etc., more than outweighs the minor elements of depreciation
396 which are not fully compensated for from time to time by maintenance and repairs, and the Master should have found that such depreciation as may exist was more than compensated for by the elements of value arising from appreciation in value as aforesaid, and erred in including working capital as an additional offset to such minor depreciation. Working capital should have been added independently to the present cost of reproduction of the physical property and included as an element making up the present value of the properties in this State, and not less than Minnesota's mileage proportion of the sum of $5,000,000 should have been included. (Testimony of James J. Hill, record, p. 1283.)

XVII.

They except to that finding and conclusion of the Master appearing on page 99 (Print, p. 88) wherein the Master finds that the value of the operating property of the Great Northern Railway Company in

the State of Minnesota upon Minnesota's mileage proportion of the market value of stocks and bonds (Ex. 65—Drew) representing defendant's entire operating system, is $147,425,363, and then finds that "of this amount a very considerable sum must be predicated on property not devoted to the public service, thus reducing the proportion assignable to Minnesota mileage," for the reason that the Master erred in finding, without any evidence in support thereof, that any proportion of said amount was predicated upon property not devoted to the public service.

XVIII.

They except to those findings and conclusions of the Master appearing upon pp. 102 to 104 inclusive (Print, pp. 90 to 92 inclusive) wherein the Master, after ascertaining from the proof offered from the books of the Great Northern Railway Company and its
397 predecessors, that the cost of said entire system of the Great Northern Railway property devoted to the public service was the sum of $319,681,815, finds this amount seems to be reduced to the sum of $295,401,213 by reason of disallowance by him of eight several items aggregating $24,280,602 leaving a balance of only $295,401,213, for the reason that the Master erred in disallowing each and every such item. This exception is intended to be tantamount to a separate exception with regard to the disallowance of each such item.

XIX.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) of the Report, wherein the Master erroneously held that good-will and corporate franchises are not proper elements of value.

XX.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) wherein the Master erroneously held that patronage and good-will of the public are not elements of value to be considered.

XXI.

They except to that finding and conclusion of the Master found on p. 106 (Print, p. 94) wherein, after finding and recognizing as matters of value, the existence in these properties of knowledge derived from experience, adaptation to the needs of the public and readiness to serve, the same were only taken into account as an offset to depreciation arising from use and weather stress and were not assigned any values in addition thereto. Such depreciation as exists in said properties over and above maintenance and repair is shown by undisputed testimony to be more than offset by appreciation of roadbed, and the Master erred in including as an offset to depreciation the
398 aforesaid elements of value comprehended within the term "going concern," and in not assigning thereto a fair and reasonable sum representing the added value in said properties over and above the bare value of the physical items comprehended in said

property. The Master found in Subdivisions numbered XI and XII, pp. 107 to 110 inclusive (Print. pp. 94 to 97 inclusive), that the lines of the Great Northern Railway are efficiently, economically and honestly managed and located and constructed pursuant to public demand, and further found that from the location, connections, character of traffic and prospects of the future growth in business, said properties contain large elements of so-called intangible values over and above the mere cost of reproduction of the physical items comprising said properties, and having so found, erred in failing to assign thereto a fair and reasonable amount covering said values over and above the cost of reproduction.

XXII.

They except to that finding and conclusion of the Master found on p. 111 (Print. p. 98) under Subdivision XIII of said Report, wherein, after finding from the testimony and proof in this case that the cost of reproduction of the entire Great Northern system, after certain deductions as stated in said report, is the sum of $518,206,215, he erroneously assumed to reduce that amount by an arbitrary percentage reduction of 12 per cent, placing the valuation of said system at $457,121,469. The Master erred in thus reducing the value of the Great Northern system, for the reason that there was no testimony justifying said reduction as to the properties of said company aforesaid outside of the State of Minnesota, and as hereinbefore shown, the reductions made by the Master in the values of property within the State of Minnesota were erroneous and unjust

399 As to the property outside of the State of Minnesota, the Master arbitrarily and without any support in the testimony, reduced the value of said system 12 per cent, or a total of $61,084,746.

XXIII.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, state and interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," beginning on p. 127 (Print. p. 112) of the Report of the Master, the value of the property of the Great Northern Railway Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and when so divided, the results have been applied by the Master, by the computations in said Report employed, to determine the net return from the intrastate passenger and freight business of said company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainants except to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and except for the same reasons, to the proportionate valuations based upon said total valuation as separated and segre-

gated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainants. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainants except to each and every determination and conclusion reported by said Master in any manner de-
400 rived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

XXIV.

They except to that finding and conclusion of the Master found at p. 122 of the Report (Print, p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found."

for the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found—or upon the full value of the property as claimed by Complainants—will not be sufficient to yield to Complainants and said company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

XXV.

They except to the Master's finding and determination found at p. 133 of the Report (Print, p. 117) as follows:

"The Master finds from the weight of testimony that the cost per ton mile of doing state freight business is at least two and one-half times as much as is such cost in doing the interstate freight business in Minnesota, and that the testimony would amply sustain, if it does not compel, a finding that such relation of cost is as three to one."

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master, fixing the cost of doing intrastate freight business lower than is warranted by any evidence in the case.

401 And they except to the failure of the Master to find that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is the cost of doing the interstate freight business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence. (Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Great Northern record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Great Northern record, pp. 1143, 1171; Chester J. McPherson, p. 1172, 1231; James J. Hill, Great Northern record, p. 305, etc.; James N. Tittemore, M. & St. L. record, p. 780, etc.)

XXVI.

They except to that finding and conclusion of the Master found on p. 133 (Print, p. 117) as follows:

"He also finds from the evidence that the cost per passenger mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota."

for the reason that there is no evidence to sustain such finding and conclusion, and the same is an arbitrary determination of the Master in fixing the cost of doing intrastate passenger business lower than is warranted by any evidence in the case. And they except to the failure of the Master to find that the cost per passenger mile of doing intrastate passenger business in Minnesota is at least twenty-five per cent greater than the cost of doing interstate passenger business in Minnesota, for the reason that the testimony compels such finding, and a finding of any smaller factor of extra cost is contrary to the evidence.

(Elliott, p. 3121, 3207, Ex. 80—Elliott; Frank E. Ward, Great Northern record, p. 1078, 1133, Ex. 53—Ward; William B. Doddridge, Great Northern Record, pp. 1143, 1171; Chester J.
402 McPherson, p. 1172, 1231; James J. Hill, Great Northern record, p. 305, etc.; James N. Tittemore, M. & St. L. record, p. 780, etc.)

XXVII.

They except to each and every finding, determination and conclusion of the Master to be found in Subdivision XVII commencing at p. 127 of said Report (Print, p. 112), entitled "Net return from intrastate passenger and freight business on property valuations assigned to each respectively," dependent upon or derived from the finding hereinbefore excepted to at No. XXV, to the effect that the cost per ton mile of doing intrastate freight business in Minnesota is at least two and one-half times as much as is such cost of doing the interstate freight business in Minnesota—or the finding last above at No. XXVI hereof excepted to, to the effect that the cost per passenger per mile in the state passenger business is at least fifteen per cent greater than such cost in the interstate passenger business in Minnesota, for the reasons stated in such exceptions, respectively. It is the intention that this exception shall be tantamount to exceptions stated separately to each and every determination and conclusion of the Master based upon either of the findings so as aforesaid excepted to; and they except to the failure and refusal of the Master to find and determine facts which would be derived and follow from findings in substance as follows, namely, (1), that the cost per ton per mile of doing intrastate freight business in Minnesota is at least three times as much as is such cost in doing the interstate freight business in Minnesota, and (2), that the cost per passenger per mile in the state passenger business in Minnesota is at least twenty-five per cent greater than such cost in the interstate passenger business in Minnesota.

On the valuation found by the Master, and apportioned between the freight and passenger business—intrastate and interstate of each—on the basis employed by the Master in his
403 Report, and on the assumption that all of the other facts found by the Master are true (except the factors of extra cost), if the last mentioned factors of extra cost of the intrastate freight business and intrastate passenger business respectively be used in the same manner as were the extra cost factors used by the Master in his Report, results will be produced substantially as indicated in the following table, to-wit:

(Here follows table, marked page 403½.)

404 XXVIII.

They except to the action of the Master in including in the item "Income applicable to Valuation," appearing on the table following p. 152 of the Report (Print, p. 134), and elsewhere in said Report, any portion of the revenue derived from "net rentals received," "hire of equipment received" and "outside operations," and the failure of the Master to assign any portion of the total value of the property in the State to the items so claimed by Complainants, to have been erroneously included, for the reason that the items so erroneously included were "net items," and that if the valuation of such total property be apportioned or assigned on the gross revenue basis directly to intrastate freight, interstate freight, miscellaneous freight, intrastate passenger, interstate passenger, miscellaneous passenger, "outside operations" (taking "gross" instead of "net"), "rentals received and hire of equipment," the rate of return on property used in the intrastate freight business (assuming as right the total valuation and factor of extra cost as found by the Master) would be only 5.33 per cent. And upon the valuation found by the Master, and the fact that it costs three times as much to produce a ton mile in the intrastate freight business in Minnesota as it does in the interstate freight business in Minnesota, such rate of return on the property used in such intrastate freight business would be only 3.93 per cent, and upon a full and fair valuation of the total property in Minnesota, such rate of return would be substantially less, and that in truth and in fact such rate of return is substantially less than 3.93 per cent in the intrastate freight business of said Great Northern Company; and in like manner, the rate of return on the intrastate passenger business would be substantially less than as found by the Master. For the reasons aforesaid, the Master erred in stating the computations, tables and results of the business of said
405 company, freight and passenger, under the rates in question in the State of Minnesota as they appear in said Report, and erred in failing to state the proper division of the property as aforesaid to the various classes of revenue.

Wherefore the Complainants pray that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

ROBERT THORNE,
HALE HOLDEN,
HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Dated October 20, 1910.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

406 In the United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al., Defendants.

Exceptions by Complainant to Report of Honorable Charles E. Otis, Special Master.

The Complainant makes the following exceptions to the Report of the Special Master, dated September 21, 1910:

I.

He excepts to that finding and conclusion of the Master appearing upon page 17 (Print. p. 16) being Subdivision III of the Report, entitled "Authority of Commission to Make Schedule of Rates," wherein the Master overruled the contention made by the Complainant that the Railroad & Warehouse Commission of Minnesota was without authority to make the orders of September 6, 1906, and May 3, 1907, fixing merchandise or class rates within the
407 State. The Master erred in holding, as a matter of law, that the joint resolution of the Legislature of April 6, 1905, authorizing the Commission "to undertake work of securing a readjustment of the existing freight rates in this State which will give a more uniform system of rates throughout the State and a uniform schedule of percentage which each class-rate shall bear to the first class, the readjustment to secure a substantial reduction in existing merchandise rates," granted legal authority and power to the Commission to proceed to the fixing and establishing of the schedules of rates embraced in the orders of September 6, 1906, and May 3, 1907, or that said resolution enlarged or added to the powers of the Commission as found in paragraphs 1969 and 1970 of the Revised Laws of Minnesota. For these reasons, the Master erred in holding that the Commission was vested with the power that it sought to exercise as demonstrated by said orders, and in holding that the rule of law as announced in the case of Siler vs. Louisville & Nashville R. R. Co., 213 U. S., 175, did not apply, and that the action of the Commission as evidenced by the orders of September 6, 1906, and May 3, 1907, was within the power and authority delegated to it by the laws of the State of Minnesota.

II.

He excepts to that finding and conclusion of the Master appearing upon page 19 (Print. p. 18), being Subdivision IV, entitled "Effect of prescribed rates, if confiscatory as to the one line of railway and not another," wherein the Master overruled the contention of the Complainant that both the acts of the Legislature and the orders of the Railroad & Warehouse Commission, being by their express terms of general application to all railroads doing business in the

State of Minnesota, if invalid or inoperative as to one, are invalid or inoperative as to all. The acts and orders in question are general in their terms and expressly apply to all railroads operating
408 in the State of Minnesota, and contain penal provisions applying to the officers and employés of all railroads in the State, making them subject to punishment and penalties for a violation of their terms. The several provisions of each act and each order are interdependent and inseparable, constituting one general scheme, whereby it is impossible to reject any portion as unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional from that which is not. The Master erred in finding, in the following conclusion:

"The fact that the legislation would not be applicable to all cases within its terms would not for a moment have deterred the Legislature in its action along the lines taken by it."

Upon the authority of the cases of the United States vs. Reese, 92 U. S., 214, United States vs. Ju Toy, 198 U. S., 253, Illinois Central R. R. vs. McKendree, 203 U. S., 514, Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, and Cotting vs. Kansas City Stockyards Co., 183 U. S., 79, these acts and orders, if invalid as to one company—as upon the proof they are—are thereby, as a matter of law, because of general application and inseparable, in their terms, unconstitutional and void as to all other companies in the State.

III.

He excepts to that finding and conclusion of the Master appearing on pp. 68 and 69 of the Report (Print. p. 60) in Subdivision VII of the Report, entitled "Real Estate Valuations as of June 30, 1908" fixing the total value of lands of said Minneapolis & St. Louis Railroad Company in the State of Minnesota, as follows:

409

Minneapolis & St. Louis case, amount allowed	$5,999,397.90
Minneapolis, appraisement of Elwood, Barney and Ridgeway	4,556,298.00
Add 5 per cent for cost of acquisition and consequential damages	227,814.19
Land outside of terminals	1,215,285.00
Grand total	5,999,397.90

The Master erred, without testimony or evidence, in arbitrarily adding only 5 per cent to the appraisement of the terminal lands at Minneapolis to cover the cost of acquisition and consequential damages, whereas the undisputed proof shows that in considering the fair value of the right of way and terminal lands in Minneapolis, 5 per cent added to such appraisement is unjustly and unreasonably low, and that to fairly state the value of said terminal lands at Minneapolis for railroad purposes, separate consideration of the different parcels of said land was necessary, and a varying range of percent-

ages, according to location and the particular circumstances surrounding each parcel, should have been used ranging from 5 to 40 per cent. The arbitrary addition of only 5 per cent to all of said lands was without any support whatsoever in the evidence, and the Master erred in limiting the percentage addition to the appraised value of said lands to 5 per cent, as aforesaid. (See testimony Thomas Cooper, Record, pp. 211, etc., 1059, 1066, Comp. Exs. 29 and 30—Cooper.)

IV.

He excepts to that finding and conclusion of the Master shown on page 78 (Print. p. 70) as follows:

Item 5, Minneapolis & St. Louis case, amount allowed (cross-ties and switch-ties).....$1,149,829

and especially the deduction of 32,000 ties from the number claimed by Complainant, and the value thereof, at 70 cents per tie.

410 The testimony of the witness Alvin S. Cutler, and Ex. 29—Cutler (See p. 918, etc.) clearly shows the number of ties claimed by Complainant should have been allowed, and there is no testimony in the record sufficient to sustain the finding of the Master that 32,000 ties should be deducted from that number.

V.

He excepts to that finding and conclusion of the Master found at p. 83 of the Report (Print. p. 74) as follows:

Item 10, Minneapolis & St. Louis case, amount allowed (Tracklaying and surfacing), $384,751.

The testimony of the witness Cutler (Ex. 30—Cutler, p. 950, M. & St. L. Record), together with the testimony of the witness Hogeland (See Comp. Ex. 7 Great Northern record), and the testimony of the witness- James J. Hill and John F. Stevens, clearly establish that the sum of $835 per mile is fair, just and reasonable, whereas the Master has allowed only $760 per mile.

VI.

He excepts to the action of the Master in reducing the figures shown in the testimony offered by the Complainant and the exhibits offered in connection with the witness Cutler, on the ground that there is no testimony justifying such reduction, and that the testimony in the case requires findings of value as claimed by the Complainant.

VII.

In Subdivision XIV, entitled "Division of Property Valuation between freight and passenger business, state and interstate," beginning upon p. 112 (Print. p. 99) and in Subdivision XVII, entitled "Net return from intrastate passenger and freight business

on property valuations assigned to each respectively," beginning
on p. 127 (Print. p. 112) of the report of the Master, the
411 value of the property of the Minneapolis & St. Louis Railroad Company within the State of Minnesota has been divided by the Master between freight and passenger business, state and interstate, and, when so divided, the results have been applied by the Master to ascertain, by the computations in said Report employed, to determine the net return from the intrastate passenger and freight business of said Company in said State upon the proportionate valuations of said property respectively.

For the reasons hereinbefore particularly set forth, and upon the several grounds thereof, the Complainant excepts to the total property valuation ascertained and used by the Master in each of the computations and tables in said Subdivisions XIV and XVII of said Report, and excepts, for the same reasons, to the proportionate valuations based upon said total valuation as separated and segregated by the Master between freight and passenger and state and interstate business, the Master having erred in reducing the value of said property below that claimed by Complainant. The Master erred also in finding the proportionate value of the property within the State assigned to the several classes of business as hereinbefore referred to; and Complainant excepts to each and every determination and conclusion reported by said Master in any manner derived from or dependent upon the erroneous determination of value as aforesaid. This exception is made and intended to be tantamount to a separate exception to each such determination or conclusion.

VIII.

He excepts to that finding and conclusion of the Master found at p. 122 of the Report (Print. p. 108) as follows:

"The Master determines that under the conditions disclosed in these cases the companies are entitled to a net return of seven per cent upon the value of their property as herein found."

412 For the reason, as hereinbefore stated, the Master erred in finding and determining the value of such property, and for the further reason that a sum equal to seven per cent upon the value of the property so found,—or upon the full value of the property as claimed by Complainant,—will not be sufficient to yield to Complainant and said Company a fair or reasonable return for the use of its property employed in the service covered by the rates in question.

Wherefore the Complainant prays that in the respects aforesaid the errors in the Master's Report be corrected and the Report be made to conform to the proof and the law appertaining thereto.

HOW, BUTLER & MITCHELL,
Solicitors for Complainants.

Dated October 20, 1910.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration

by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

413 Circuit Court of the United States, District of Minnesota, (Third Division).

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Minnesota Rate Cases.

The exceptions hereinafter contained are offered on behalf of defendants, Charles F. Staples, Ira B. Mills, Charles E. Elmquist and George T. Simpson only, and wherever in said exceptions the term "defendants" is used, it is intended to mean only said last named defendants.

414 Now come the defendants above named, and present to Hon. Charles E. Otis, the special Master in the above entitled action, their exceptions to the findings of fact and conclusions of law hereto served by him on counsel for the respective parties as his proposed report herein. As the findings contained in said Master's report in said several actions are similar so far as the rules applied are concerned, counsel will as far as possible, where the application of such rules is expected to state the reasons for the exception but once, such reasons to be taken as applying to each of the cases. Counsel will also endeavor to make their exceptions to the several findings in the order in which said findings are found in the Master's report.

Counsel respectfully except:

I.

To that part of the report of the Master, and the arguments in support thereof found on pages twenty (20) to sixty-one (61) of said report inclusive, wherein certain statements of fact are set forth at great length in reference to the alleged interference between the rates here involved and the interstate rates of the railroad companies concerned, wherein the Master states his conclusions in the following language:

"The facts as found establish conclusively that the State, in the rates prescribed by it, has not kept within the limitations imposed upon it, and has exceeded its constitutional powers, in that such rates constitute a direct interference with and impose a burden upon interstate commerce, and effect unjust discrimination between interstate localities."

This exception is intended to apply to each of the findings upon which the conclusion is based, as well as to the conclusion itself, in each of the cases.

415 Defendants contend in support of this exception, that each of said findings and said conclusion, so far as they find that the rates here involved directly or necessarily interfere with interstate rates, or in any manner exceed the constitutional power of the State, or conflict with constitutional federal authority, are not supported by the evidence and are contrary to law. The federal sovereignty possesses only such powers as were granted to it by the Federal Constitution, and such other powers incidental thereto as may be necessary to make the granted powers effective.

The Federal Constitution gave the Congress exclusive control over all commerce and transportation, beginning in one state and ending in another, but gave it no power over commerce beginning and ending in the same state. The Interstate Commerce Act provides for the regulation of transportation carried on between different states, but provides by its terms that it shall not apply to any commerce, the movement of which begins and ends in the same state. The laws here involved by their express terms apply only to transportation beginning and ending within the state of Minnesota, so that the Federal and State laws operate in different fields and do not overlap or conflict. The Federal Supreme Court has many times passed upon the respective commerce powers of the states, and the nation, and has always adhered to the construction of the Federal Constitution announced in the case of Covington B. C. vs. Kentucky, 154 U. S. 204, where it was stated that the power of the Federal government is exclusive over interstate commerce, and that the power of each state is equally exclusive over its internal commerce. As the laws here involved apply only to business beginning and ending within the state, no railroad company doing business here can apply them, contrary to their terms, to interstate business and then allege its own unwarranted action as a ground for holding the laws void.

416 The constitutional relation between the nation and the states is not elastic. The orbit of each sovereignty is rigidly fixed by our written constitution and cannot be changed except by the people. The law of a state affecting a subject of Federal jurisdiction is void, and a Federal law affecting a matter subject to state jurisdiction is also void. The Federal Employers' Liability Act was held to be void because it applied to the employees of railroads while engaged in handling commerce wholly within a state, Congress having no control over that subject. There is absolutely nothing at variance with former decisions in the case of Western Union vs. Kansas, 216 U. S., cited by the Master as justification for this finding.

A holding that would cripple the commerce power of the states would not enlarge the commerce power of the nation.

II.

Defendants also except to the valuation made by the Master of the property employed in the state by each of the above named railway companies and to the entire plan adopted for fixing such valuation, for the following reasons:

The Master ignored the original investment of the companies as a measure of the maximum value upon which they are entitled to a return, and also ignored the outstanding stocks and bonds of each of the companies though such stocks and bonds exceeded the actual investment. He adopted the so-called "cost of production" as the sole measure of the value of railroad property. There are many bases on which such a speculative valuation could be made. The plan followed by the Master in these cases reduces railroad valuation to a mere exploit of the imagination. Under it, the value of the railroad property can be fixed at any figure which interested parties will swear they believe it to be worth, and if such a plan is upheld by the courts, railroad companies can make the public pay any rates they see fit to charge.

417 The companies start with the fact that lands taken for railroad purposes cost something more than the ordinary market value, on account of what might be called severance damages, which in some cases are small and in others large, the amount depending on the circumstances of each case. They take the total amount of this extra cost, and find what percentage it is of the market value, per acre, of the lands, at the time they were acquired (being generally about 200% of that value) and assume that this severance damage would be the same percentage of present market value of their land if it had to be acquired now, as it was of its original cost.

The other postulates for getting at the cost of reproduction adopted by the Master are:

1. Assume that the railroad is not in existence, but that those things which have resulted from the existence of transportation facilities, the development of the country and the growth of the cities, and present property values, remain unchanged. That under these impossible conditions the railroad company was obliged to acquire its lands now and employ the necessary labor and obtain the necessary ties, lumber and other construction material, and equip the road at present prices.

2. Having found the highest present market value of the lands necessary for right of way, yards, terminals, etc., increase that value by the same percentage of the present value of the land as the severance damages paid at the time of its acquisition, were of its then value.

3. Fix an arbitrary time for reconstructing the road, eight, ten or more, years, and allow interest on the entire estimated cost for half the period.

4. Where the road crosses or runs along a public street where no charge was made by the city, or, as in some cases, the road passes over

bridges or through tunnels constructed by the cities, include the cost of all such structures, and the value of the streets as a part
418 of the value of the railroad. Make no deductions for free rights of way over government lands, or other public donations.

No more potent scheme for the inflation of railroad values could possibly be invented. It sets at naught all the laws of this and other states, against the issuance of watered or fictitious stocks and establishes a watered basis for income irrespective of stocks.

Defendants contend that, as the Federal Supreme Court has often stated, railways are public highways, and that in operating them the railroads are performing a governmental function. That their lands were acquired either as a gift from the government, or by the exercise of the sovereign power of the state; that the right in the lands acquired in either case was the right to use them for the specified public purpose, not for private speculation. The power of eminent domain by which their lands were acquired, is the same power employed by the State itself, when it needs land for public highways, or other governmental purposes, and we contend that land so acquired by a railroad company is just as irrevocably dedicated to public use as if acquired by the State itself, for a public purpose. The only private investment in the transaction is the money actually invested by the railroad company in acquiring the land and in constructing and equipping the road. On the money so invested, but on nothing more, the railroad company is entitled to a reasonable return. The railroads cannot, at the expense of the public, for their own private gain, capitalize by a fictitious valuation, the public highways used by them in carrying on the governmental function which they are engaged in performing.

Defendants, therefore, except to the valuation found by the Master in each case, and to every specific part and portion of such valuation, whether of the whole or of any part of either of the roads involved, and ask that the valuation be fixed at the actual cost of each
419 road as is shown by the evidence, and if in either case such such original cost is not sufficiently shown, that the action be dismissed for a failure of proof on the part of the complainant.

Defendants also invite the Master's attention to the fact that these are not actions brought by the several railroad companies; the actions were brought by the stockholders of the several companies, ostensibly to protect their rights as stockholders. A railroad stockholder has no right in law to claim a return from the public on anything more than the face of the valid stock held by him. At the suit of a stockholder the value found cannot, in any view, exceed the outstanding stocks and bonds.

III.

Defendants also respectfully object and except to the apportionment made by the Master of the value of the property of the various railroads situated in this state, between the passenger and freight business carried on by them. The exception is intended to apply to the method followed in making such apportionment, as well as to the result.

Defendants concede that after the value of the property used in the state by any company has been found, it is necessary to apportion that value between the passenger and freight business, and to reapportion such value between the interstate and intrastate freight business, and the interstate and intrastate passenger business respectively, in order to ascertain the actual value of the property used in the strictly intrastate business of the company, as that is the only business over which the State has jurisdiction.

The original division of that value between the passenger and freight business is somewhat difficult, because the units of production—the ton mile and the passenger mile—do not reflect with exactness the extent to which the property is used in their respective production. Another consideration which is important on
420 this subject is that all the property is not used in common in these two branches of the business. Freight and passenger equipment are almost entirely distinct; while engines are not rigidly assigned to either branch, the relative value of passenger and engine service can easily be determined by getting the engine miles employed in each service, and thus supporting the engine value assigned to the State. Side tracks, and the extensive switching yards and terminal property in the large cities, and such property as Minnesota Transfer, are nearly all freight utilities; their value should be ascertained and assigned to freight business, and only property used in common be divided on an arbitrary basis. The Court has no right to fix the relation of rates, and can only consider whether the property used in intrastate business is, under the laws of the State, allowed to earn such income that confiscation of the property cannot be asserted; but the means for reaching a just conclusion on that subject are made more simple by finding, as nearly as possible, what property is used in the passenger business and what in the freight business.

The error committed by the Master is not so much a matter of misconstruing the evidence, as of adopting an unjust basis upon which to make the computation. There is not, even after having allocated to each branch the value of the property used exclusively therein, a sufficient similarity between the passenger mile and the ton mile to furnish an ideal criterion as to the amount of use made of the property in the production of either. The train service, the revenue and cost, are different as to each. The passenger mile revenue is two cents, in intra business, while the intra ton mile revenue on the Great Northern (53—Ward) is .01381 cents, and on the Northern Pacific (80—Elliott) the intra ton mile revenue is .011910 cents. The difference in unit revenue, while arbitrary, is theoretically founded on the difference in the cost of the service. If the
421 question were one of fixing rates, instead of determining whether the State is guilty of confiscation, the object would be to make such adjustment of the rates that the net profit in each branch would, in proportion to the service rendered, be on a substantial parity. The prime object here is to get at the value of the property assignable to intrastate business, and for that purpose a fair and equitable basis for the division must be found. Revenue is not a just or trustworthy basis upon which to make the division;

the division on that basis would, for many reasons, apportion too great a proportion of the value to the passenger business. If it cost no more to produce a passenger mile than a ton mile, the passenger business at present rates would be unduly profitable, on account of the greater unit revenue. If the apportionment be made on the basis of that revenue, it assigns more to the passenger business than the unit production would justify, even if the rates were properly related. Such an apportionment assumes that freight and passenger unit cost bear the same relation to each other as freight and passenger unit revenue, but that is not true, and the Master has not so found. The Master divided the value between the two branches on a flat revenue basis, but has divided the cost on another basis, which assigns a still greater proportion of cost to the passenger business. The passenger business, therefore, is charged with more than its share of the value of the property, and also with more than its share of the cost.

The revenue basis of division is also inherently wrong in any case where the justness of rates is the question to be determined, because if passenger rates are too high, and the revenue excessive, the value of the property assigned to the business will be accordingly too great; and if the rates are too low, the reverse of this will be the result. If too great value be assigned to the passenger business, too little will be assigned to freight, and vice versa. Lowering the rates on
422 freight would, by this method, increase the value of the property to be assigned to passenger business. While the ton and passenger mile basis of division is not ideal, it has the merit of being stable, and comes very much nearer showing the relative use of the property than does the gross earnings.

Many other tests can be applied for the purpose of verifying the approximate accuracy of the division on the ton and passenger mile basis. The relative value of freight and passenger equipment throw some light on the probable relative use of the property. That relation is nearly the same as the ton and passenger mile relation. Again the passenger car miles, and the freight car miles are a good test of the relative use. That relation differs but slightly from the ton and passenger mile relation. If the passenger engine miles were added to passenger car miles in intra service, and freight engine miles added to freight car miles before making the comparison it might be fairer. The relative train miles would be no basis, because the weight and number of cars in a freight train differ so radically from the weight and number of cars in a passenger train. In the absence of a better basis, we shall insist on the division being made on the relative ton and passenger miles, which would give a very different result from that found by the Master.

IV.

Defendants object and except to the division of the value of the railroad property made by the Master betwen the state and interstate business, both passenger and freight.

Such division should be made in proportion to the use made of the property by each of the classes. The Master has assumed to

make this division also, on the basis of the relative gross earnings, but that basis is clearly unfair to the intrastate business. It appears from the evidence and is found by the Master that the intrastate ton mile revenue in this State is greater than the interstate ton mile revenue.

423 In the Great Northern case (53—Ward) the intrastate ton mile freight revenue is as compared to interstate, as 2.03 to 1. In the Northern Pacific case the relation is 1.43 to 1 (80—Elliott).

Under these circumstances a division of the value of the Great Northern property used in the freight business in this State, between interstate and intrastate on the gross earnings basis assigns to the intrastate business, in proportion to its volume, more than two dollars of such value, for each dollar assigned to interstate. To illustrate, if all the business were freight, and the ton miles of inter and intra business were equal, the intrastate revenue on the Great Northern would be a little more than twice the interstate revenue. A division of the value of the property employed in the business, between the two classes on the gross earnings basis would, in such case, assign to interstate business, and require it to earn a dividend on only one-third of the value, intrastate business would be required to earn a dividend on two-thirds, which would be manifestly absurd.

The same injustice in kind, though somewhat less pronounced in degree, would result from a division of the Northern Pacific value in the State on the gross earnings basis. The Master suggests that it would be no more favorable to the State if the division were made on the basis of the cost of the service as found by him between inter and intra. The truth of that statement is self-evident, because he has found that in the freight business the relation of unit cost intrastate to unit cost interstate is as 2.5 to 1. To divide on that basis would increase the burden upon the intrastate business. The Master finds in the Great Northern case that the intrastate gross earnings are 15.11% of the total freight earnings, but that the intrastate cost is 17.99% of the total State cost. It is clearly better for the intrastate business to be charged with -he former percentage of

424 the value of the property employed in the State, than the latter, but neither percentage is right, as a measure of the value to be assigned to intrastate freight. If the gross earnings are to be used at all as the basis of division, they should be properly equated so as to reduce them to a common unit basis.

In the Great Northern case the interstate earnings should be multiplied by 2.03 before making the division; this would bring them to the amount they would reach if the interstate business produced the same ton mile revenue as the intrastate. But even if the revenue were equated to make it represent the same number of units of production, earnings would still be an unsatisfactory and unreliable basis, upon which to make the division of the value of the property, because they bear no fixed relation to the use of the property, in the two classes of business.

Rates and resulting earnings are more or less arbitrary, and may be changed at will, while the relative use of the property in the two classes of business arises out of the natural conditions, which are not subject to material change.

But aside from the instability, the inherent defect in the gross earnings as a basis for the division, lies in the fact that if the earnings upon either class should be too high or too low, the share of the value of the property assigned to it would be correspondingly too great or too small. If interstate rates should be reduced the value assignable to interstate business would diminish with the revenue, and automatically attach itself to the value assignable to intrastate, while there would be no change whatever in the relative volume of the business. If a reduction were made in intra rates, the effect on the value would be reversed. Division on this basis is criticised by the Federal Supreme Court in the case of C. M. & St. P. Ry. Co. vs. Tompkins, 176 U. S. 167.

Division on the basis of cost would not be subject to the fluctuations involved in a division on the gross earnings, and if the unit
425 cost was the same throughout, that would be an unobjectionable basis. But inasmuch as unit cost differs in the different classes, cost could not be used without being equated.

The simple and entirely unobjectionable basis for the division is the unit of use. Between inter and intra freight the ton mile is the perfect and only unit, reflecting, as it does, the two fundamental elements, weight and distance. It is the only basis on which the two classes of freight business can be compared as to volume, and is the only basis upon which the value of the property employed in hauling them can be fairly divided between them.

In the Great Northern case the intra freight ton miles for the year 1908 (Ex. 20—Parker) were 8.07% of the Minnesota freight business. As above stated, the gross earnings of the intra freight were 15.11% of Minnesota freight earnings, and (as found by the Master) the intra freight cost was 17.99% of the Minnesota freight cost. Dividing the value of the property employed between inter and intra freight on the gross earnings basis would require 8.07% of the business to pay a return on 15.11% of the property, making the division on the relation of cost of the service, as so found, would require 8.07% of the business to pay a return on 17.99% of the property.

Dividing the value of the property assigned to the Minnesota freight business by the Master on the different bases mentioned, gives these results:

8.07% is	$8,780,343
15.11% is	16,442,200
17.99% is	19,573,520

In the Northern Pacific case the intra ton miles are 12.33% of the Minnesota business (54—Johnson). The intra gross earnings are 16.35% of the intrastate earnings, and the intra cost, as
426 found by the Master, is 25.362% of the Minnesota freight cost. The value of the property assigned to Minnesota freight, divided on these different bases, gives the following results:

12.33% of the value is	$8,192,738
16.35% of the value is	10,867,837
25.36% of the value is	16,850,596

Revenue which would be ample to pay a reasonable income on the valuation assigned to intrastate freight on the true or ton mile basis, might appear entirely inadequate if applied to the value assigned to that class of business on the false basis of gross earnings, or the still more false basis of the unequated relative cost. The same reasoning applies with equal force to the Minneapolis & St. Louis case.

V.

Defendants object and except to the division of operating expenses between freight and passenger business in the State, and to the method employed in making the division in the Great Northern and Northern Pacific Cases.

The Master divided the value of the property between the two classes on the gross earnings basis, which we insist is unfair to the passenger business, but when the Master assigns the gross operating expenses in the State between the freight and passenger business he adopts an entirely different basis for the division. The gross earnings basis would be unfair but the plan followed is unfairer. Dividing the total cost in the State between freight and passenger on the gross earnings basis adopted by the Master for division of the value would, in the Great Northern case, assign 21.4% of the cost to passenger and 76.6% to freight business. This would make the gross passenger cost in the State approximately $2,500,000.00. The Master has assigned as passenger cost in the State on the Great Northern, $3,670,058.00.

427 A division of the cost between freight and passenger on the Northern Pacific on the gross earnings basis would assign 73.6% to freight and 26.4% to passenger business. This would make the passenger cost on that road for the State approximately $2,050,000.00. The Master assigns to the passenger business in the State on that road $2,311,631.00.

There was a good deal of controversy at the trial between the parties to the action as to the basis for dividing the unallocated operating cost between passengers and freight. Each presented a method of division based on use. The theories employed for determining the extent of the use, however, differed very materially. The railway companies followed a plan the essential basis of which was an apportionment according to the revenue train miles, or the "revenue" engine miles, in the two branches of the business. Some of the items of cost are divided by the companies on other arbitrary bases, but the train mile was the controlling characteristic of their plan. The State contended that a passenger train mile and a freight train mile were so essentially different that they could not be made the basis for correct comparison between the use made of the property in the passenger business and the use made of it in the freight business. It also appeared from the testimony of the railroad witnesses, that about 30% of the engine mileage was employed in switching. There was no serious controversy about the fact that fully 95% of the switching was incurred in the freight business and not over 5% thereof in the passenger business. The State contended, there-

fore, that as to all items of cost divided on the train mile basis, the actual freight train mileage should be increased by adding thereto 95% of the switching mileage, and the passenger train mileage increased by 5% of the switching mileage before making the apportionment. The State contended that if the switching mileage was not taken into account in this way, that apportioning the cost on the train mile basis would impose on the passenger business very
428 much more than its share of all the items of operating cost apportioned on that basis. That the State's claim was well founded is demonstrated by the fact that the apportionment made by the railway companies, which was adopted by the Master, imposed upon the passenger business a greater proportion of the total cost than would be imposed upon it by the manifestly unfair gross earnings basis.

The plan adopted by the Master was shown to have been approved by the Interstate Commerce Commission, but that soon afterwards such approval was withdrawn. The discrediting of the method by the Interstate Commerce Commission was presumably because of its inherent unsoundness.

We insist on the division made by the State, or at least that the division be no more unfair than the gross earnings basis.

VI.

Defendants object and except to the finding of the Master as to the relative cost of doing intrastate and interstate freight business.

The finding of the Master that the relative cost of doing intrastate freight business in Minnesota is two and one-half times the cost of handling interstate business, is not only wholly unjustified by the evidence, but it is in conflict with the findings in every other case on the subject, reported in the books. Passing the finding on that subject in the Ames case, which on account of the very peculiar language used by the witness for the State, whose testimony was followed, makes the case inapplicable here, we find the two cases which have been tried on the merits in the Circuit Court, are the Keyes case in North Dakota and the Missouri rate cases.

It is not easy upon a casual reading to understand just what Judge Amidon intended to find as to the relative cost of doing the intra business in that state as compared with inter, but a careful analysis of his decision shows that he intended to find, and did find,
429 that the extra cost was to be found only in the items regularly grouped by the railroads under the head of "conducting transportation." That cost, he held, was twice as great for the intra business as for all business. After stating that the evidence before him on this question was wholly uncontradicted, he said:

"Many witnesses were called by the plaintiffs to testify in respect to the relation of cost to revenue in the case of local business as compared with the entire business of the companies. By none of them is the expense of conducting transportation placed at less than twice as much in the former case as in the latter. Mr. Earling, General Manager of the Milwaukee road, a person of great experience

and apparent candor, stated, that the total cost of conducting local business on the entire system of that road was at least twice as great as for through business, and that in sparsely settled communities like North Dakota where traffic is light, such cost was four or five times as great in the one case as in the other."

After finding on this testimony that intra, as to the haul, cost twice as much as inter, he further said:

"The operating expenses of a railway consist of two principal items: (1) cost of maintenance of plant; (2) Cost of conducting transportation. The former item is constant, and can justly be divided between the different kinds of traffic in proportion to their volume.

As to the second item, however, such a division cannot properly be made; for it is agreed by all who have occasion to consider the subject, railroad commissioners as well as railroad officials, that the cost of conducting transportation, is relative to revenue much higher for local business than for the general business of a road."

What Judge Amidon actually found, therefore, from the undisputed evidence on the subject before him was that all the operating expenses, except those included under the head of "conducting transportation" should be divided between interstate and intrastate business in proportion to their volume, but that the expenses included under the head of conducting transportation were twice as great for intra as for all business.

430

In applying his finding he failed to give intra business credit for its extra unit revenue, and for that reason fell into the common error which runs through all the cases. He found "conducting transportation" was 30.25% of the revenue on the Great Northern road.

He also found the average operating per cent in the State on the Great Northern was 60.82%.

He considered that the 30.25%, being the percentage of revenue consumed in the cost of "conducting transportation" was included in the operating per cent, but in order to double it, it should be added again.

He found the reduction in intra rates made by the State was 13.00%. He then added all of these percentages together.

Average cost of operation in State	60.82%
Extra cost, local	30.25%
Reduction by State	13.00%
	104.07%

Omitting to credit intra business with its intra unit revenue, and assuming that the unit revenue on inter and intra was the same, the above process showed that it would take 104.07% of the revenue to pay operating expenses on intra business.

The intra ton mile revenue in North Dakota, was, very likely, as it is in other states, twice the inter ton mile revenue, so that 100% of the inter ton mile revenue might not be more than 50% of the intra ton mile revenue.

Without further discussing the incorrectness of Judge Amidon's conclusion, we desire to especially emphasize the fact that he found the extra cost intra was confined to haulage items, and that as to those items the intra business cost was twice as much as all
431 business. As "conducting transportation" in that state comprised just about one-half of the total operating cost, the effect of his finding was to double one-half the inter cost and divide the residue of the operating cost between inter and intra equally, per ton mile. This agrees, in result, with Judge McPherson's finding in Missouri, that the intrastate cost is 50% more than inter.

Judge McPherson also failed to give intra business credit for its greater ton mile revenue, but charged it with the greater ton mile cost. The Master's decision here is the first decision in which the extra intra ton mile revenue is recognized. It is not the first case in which the intra ton mile revenue was shown to be greater than inter ton mile revenue. It appeared clearly in the Missouri cases, but was overlooked by the Court. Ton mile revenue for intra is greater everywhere, because of the relative average shortness of the haul, and the higher rates per ton mile which short haul business always commands, in every schedule. In ton miles produced over short hauls the element of weight predominates, and in ton miles produced over long hauls the element of distance predominates. Twenty-five tons carried 1,000 miles makes 25,000 ton miles. It takes 2,500 tons carried ten miles to make 25,000 ton miles. The miles are a hundred times greater in the first instance, and the tons are a hundred times greater in the second. The greater revenue producing ability of the ton miles wherein the weight is the predominating factor is that while rates per hundredweight increase with the distance, the increase is not fixed in proportion to the distance.

The rate for a haul of any given weight for ten miles is very much more than one-tenth of the rate for a haul of the same weight for one hundred miles. A given number of ton miles produced under any proper schedule of rates, will show very much less revenue where the haul is long than where the haul is short. The
432 most profitable business per ton mile is that in which the weight instead of the distance predominates in making the ton miles.

The Master found in these cases, in accordance with the undisputed evidence, that the intra ton mile revenue was greater than the inter ton mile revenue; if, therefore, the relative cost of doing the intra business was no greater in this State than in North Dakota or Missouri, it conclusively appeared that the rates involved were more remunerative than the interstate rates. On the subject of relative cost, the Master rejected the testimony of the State's expert, taken from the company's books, and considered only the testimony of the railroad witnesses. Their evidence was mere opinions, not founded on any fixed basis of accounting or mathematics, ranging widely between maximum and minimum limits.

The Master evidently did not consider himself bound by the adjudications of other courts above referred to. Unless the extra ton mile cost in this State for intra was found to be even greater than

it was found to be in other states to absorb this extra ton mile revenue, the defendants were entitled to judgment in their favor.

The Master found the relative cost here to be greater than it was ever found to be anywhere.

In the Missouri cases, there was much evidence of the same tenor and by the same witnesses who testified here, as to the relative cost of the service. Mr. Elliott and Mr. Gray of the Northern Pacific and Messrs. Doddridge and McPherson all testified there substantially as they did here, Mr. Elliott even going to the extent,—as he did here,—of saying that he was not comparing inter and intra business, but was comparing through and local business.

Two witnesses testified for the State in Missouri on the same subject, the expert accountants employed by the State claiming that there could be no extra cost for intra business outside of
433 train movement items, and that the relative excess confined to those items was less than 50% per ton miles. On all of this testimony, Judge McPherson found that the extra cost of intra freight was 50%. This, so far as the extra burden on intra business is concerned, was equivalent to holding that the cost was 2 to 1 on haulage items. It can't be said that Judge McPherson showed any disposition to be unfair to the railroads, and no doubt his finding established as high a ratio of excess cost for intra business as he felt the evidence warranted. His language was:

"The expense of doing the state business over interstate is greater for carrying freight by at least fifty per centum, and at least twenty-five per cent for carrying passengers."

The Arkansas and Oklahoma cases where the relative cost was fixed at 2 to 1, were each submitted on affidavits, and no doubt the decisions were in accordance with the testimony there before the Court. No distinction was made in the latter cases between haulage and non-haulage cost.

If it is true that this matter of relative cost of doing inter and intra business is the one subject in the business world as to which the modern method of cost accounting is impotent and mathematical deductions—approximately accurate, like the division of income and cost between states—are impossible, it must at least be true that the courts are not going to treat the relative cost as an uncertain element, with no limits as to its variability, to be arbitrarily found and differently applied in each case according to the number of expert witnesses that may be called to express opinions upon it.

The relative cost of doing the inter and intra business is necessarily stable and subject to but little change in the same state, or in different states, from year to year. To say that the disparity in cost is greater in Minnesota than in North Dakota is absurd; that it is greater in Minnesota than in Missouri is unlikely.

434 The finding made in these cases was not made on different or more satisfactory testimony, because, as before stated, the witnesses were largely the same here and in Missouri, and in the North Dakota case the railroad testimony was uncontradicted.

In these cases there was placed before the court the most complete analysis of all the differences in the relative costs referred to, and

from the data taken from the companies' records an absolutely concrete mathematical calculation was produced showing the relative cost of through and local business, and by a process of equating, the relative cost of inter and intra, showing the extra cost as applied to all expenses, to be less in the Northern Pacific case than 1.50 to 1 and in the Great Northern case a little more.

In these cases there is not a word of testimony that would justify a finding of any extra cost, except as to haulage items. Mr. Johnson, Assistant Controller of the Northern Pacific, whose statement as to relative costs is the fullest and clearest, carefully limited his testimony to train movement items only.

His testimony on this subject appears at page 4119, et seq., of the Northern Pacific Record. He had said in his affidavit on the preliminary hearing:

"In the opinion of this affiant, the cost of hauling freight, included in the classes of business local to the state, exclusive of all other service, is about two and one-half times as much as the cost of hauling through freight, in through trains."

When on the stand as a witness he was asked whether he still believed the statememnt in his affidavit was true. He said:

A. Yes, sir; hauling, I want to emphasize the word hauling; it does not speak of all operating expenses.

Q. No, it speaks of hauling?

A. Yes, sir.

Q. With that exception, the statement contained in your affidavit is true?

A. Yes, sir; that it costs at least 2½ times for the haul."

435 When asked whether there was any reason why the apportionment of the other operating expenses, outside the haulage or train movement cost, between inter and intra, should not be charged in proportion to volume, he answered (P. 4120).

"In making the investigation we never went beyond the cost of the haul. * * * I think that in the merchandise hearing before the Commission, Mr. Gray, the Comptroller of the Northern Pacific, stated, that he didn't make any attempt to go beyond that point; that the other factors were such as to leave the question a very open one, as to what should be charged and what should not be charged, and what the proper basis should be."

It appears from the language used, that Mr. Johnson was comparing through and local business, not inter and intra business as distinct classes. The same thing is true of the testimony of Mr. Hill and Mr. Elliott. But Johnson was clear and emphatic as to the part of the service in which the extra cost arose.

The language employed in Johnson's affidavit, upon which the above cross examination was based, is a fair sample of the ingenious phraseology employed by railroad counsel and witnesses throughout on this subject. The cost of hauling "through freight on through trains" was made the standard of comparison. Mr. Johnson is made to say that,

"The cost of hauling freight included in the classes of business local to the state, exclusive of all other service, is about two and one-

half times as much as the cost of hauling through freight on through trains."

This is not a comparison of the cost of intra and inter business. "The classes of business local to the state" are exactly the same in general character, as the interstate business.

The agricultural products of the State are nearly all marketable in our cities, and the commerce between the manufacturers and merchants of the Twin Cities and (Duluth and the smaller cities
436 and rural communities of the State is not different in character from the commerce between the people of this State and the cities of St. Louis, Chicago and New York. The peculiar language quoted, therefore, was used not to indicate any peculiarity in the character of the merchandise hauled, but to distinguish the kind of service. The complaint alleges that there is no difference in character between their intra and inter business. There are but two kinds of trains used in hauling freight, and, as respects the haul, but two classes of freight. The companies run through trains extending generally without stop between terminii of divisions, and local trains, stopping at all intermediate stations to deliver and take on business. Business carried on through trains is, as to haulage cost, carried at the least expense, and that carried on local trains is, as to haulage cost, necessarily more expensive. There is no "long haul" local train service and no "short haul" through train service.

The local business, that is the business carried on local trains, is frequently called short haul, and the through is called long haul business. If the terms long haul and short haul were to be used as meaning anything different from through and local, it would be necessary to have some criterion based on length of haul, by which to distinguish them. If mere length of haul was to be considered, it would be necessary to designate some distance at which business would cease to be short haul and become long haul, otherwise there would be hopeless confusion. But mere distance is not what determines the unit cost of the haul. The unit cost depends on the kind of service. The companies classify their business as they receive it according to the service it is to receive, and that classification and service is what determines the unit cost of the haul.

All freight received by a railroad company at its terminals, or at any divisional point, is sorted into two classes regardless of whether it is inter or intra. That destined for points at or beyond
437 the next division terminal is set over into one class for transportation on a through train, and that destined for points within the terminii of the division is set over into a class to be forwarded on a local train. This sorting is constantly going on, it is repeated at every divisional point as to both car load and less than car load lots. Business that goes on a through train over one or more divisions and is not destined for a divisional point, changes trains, and is carried on the last division from the division terminus to its destination, on a local train. Such a shipment is through business, or "long haul," so far as it is carried on a through train, and is "local business" or short haul so far as it is carried on a local train. The companies thus make the natural classification, and there is no room

for any other. The local train service as to haulage is more expensive than the through train service, and in determining the cost of doing any class of business, the question always is, which service did it receive? The cost of hauling freight on a through train over two divisions of say 250 miles in the aggregate, is necessarily less per ton mile than the cost of hauling freight on a local train say 10 miles. In the particular instance the cost per ton mile for the shorter haul might be three or four times as much as the cost per ton mile for the longer haul. But all that is taken care of in the rate schedules. 100 tons hauled 250 miles would make 25,000 ton miles. If we take the actual weight of the shipment and apply to it the first class merchandise rate of the schedule in controversy, for a 250 mile haul, it will give a revenue for the service of $1,102.40. If we take 25,000 ton miles produced over a haul of 10 miles, and apply to this weight the rate in the schedule in controversy for the ten mile distance, we get a revenue on the 25,000 ton miles of $6,490.00.

For the same number of ton miles in this instance, the short haul would produce a revenue per ton mile nearly six times as great as that produced on the long haul.

438 Therefore, when the railroad witnesses wander from the classification of their freight business into through and local which, is in truth and fact, the long haul and short haul business, and undertake in their testimony to speak of the "long haul" and "short haul" business in the abstract, they can keep within the bounds of truth and yet make their evidence very deceptive, by comparing the extremely short haul local train business with business carried on through trains. The disparity in cost per ton mile may be considerable, but the disparity in ton mile revenue is equally great or greater, because all schedules provide a greater unit revenue for short hauls. All schedules are so made in recognition of the fact that for short haul distances the unit cost is greater. The railroad witnesses always forget to mention the greater ton mile revenue for the short haul.

There is little traffic over distances of ten miles to produce revenue or incur cost, and as distance increases the tendency is towards a leveling of both the unit cost and the unit revenue. The extreme comparisons, therefore, made by the railroad witnesses mean nothing. There never can be, however, a complete leveling of the unit cost and unit revenue of local business as compared with through business. The differences are actual, inherent and permanent, and the intelligent consideration of the question of relative cost requires a determination of the relative volume of inter and intra business that receives the more expensive service on local trains, and the less expensive service on through trains.

On this subject, in those cases there is no contradiction of the testimony of Mr. Hillman, which shows (Hillman Ex. G-5, G. N. case) that much less than one-half of the business handled on local trains is intrastate. More than sixty per cent of local train business both carload and l. c. l. is interstate. In ton miles about one-tenth of the interstate business receives the more expensive local

439 train service, but in volume of traffic—actual tons—about one-fourth is so carried. The interstate tons carried on local

trains, as compared with intrastate so carried, are about 3 to 1, while the relation of inter to intra ton miles is about 2½ to 1.

Investigations made in Missouri, by taking for comparison all the business done for different fixed periods on different roads doing business in that State, testified to by the railroad witnesses Doddridge and Peabody in the Missouri rate cases, fully uphold Hillman's deductions as to the relative volume of inter and intra carried on local and through trains here. That is why Hillman's testimony on the subject was not contradicted.

The importance of this aspect to the question arises from the fact that local train service is the only factor of extra cost that can be attributed to intra business in order to claim that, as a class, it is more expensive than the inter.

So far as "two terminal charges" are concerned, they are very adequately taken care of in the terminal allowance in the rates in controversy.

When it appears, therefore, as it does here, that the extra cost of local train service, instead of being all charged to intrastate business, must be charged between the two classes more nearly in the relation of three parts to interstate, and one part to intrastate, it very materially affects the question of the relative cost of doing the business. The other fact which affects the question directly is the proportion of intrastate business which receives the less expensive through train service.

This large volume of interstate business receiving the local train service, raises the cost of doing interstate business considerably above the cost of through train business, and the part of the intrastate business handled on through trains reduces the average cost of intrastate business below the cost of local train service, so that when we compare the two classes as a whole the cost gap between them is very much narrowed.

440 In the face of this situation the statement made by the Master at page 129 of his findings that:

"By far the greater volume of state business belongs to the more expensive short haul class:"

is no justification of his finding as to relative cost. The statement is only a half truth because it does not suggest that a very much greater volume of the interstate business (though a less proportion of the whole) belongs to the same class, and that, therefore, interstate business, as a class, must be charged with the greater part of the extra cost. The Master's statement carries an implication that the extra cost of local train service should be mainly charged to the intra business because so great a proportion of it belongs to the class which receives that service, and that no considerable part of such extra cost is chargeable to interstate business. Common sense, as well as the testimony of all the witnesses in these cases, proves that it is the character of the service, and not the character of the shipment—as inter and intra—that determines the cost; and it follows that each class should be charged with its share of the extra cost, in proportion to the relative quantities of each receiving the more costly service.

Mr. Elliott and other witnesses showed that extending the length of a through haul over more than one division does not lessen the ton mile cost. Mr. Elliott said, that circumstances being equal, the cost per ton mile of hauling a given quantity of freight would be duplicated on every division over which it passed.

To call attention to the relative length of haul on inter and intra business means nothing, unless it is accompanied by a statement as to how much of the distance it received the less expensive, or the more expensive, service. All business carried on through trains (unless it originates at or is destined for a division terminus) receives both kinds of service. It is either hauled from an intermediate station to a division terminal, and there taken onto a through train and carried by that service as far as possible; or having been carried as far as possible on a through train it is set out at the end of the division nearest to its destination, and there picked up by a local train and carried to its destination at some intermediate station.

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It may have local service at both ends of its trip, and most "through" business must have local service at one end or the other. The class of business which, for the entire length of its haul, gets through train service is necessarily very small. When we talk about through business, therefore, we simply mean all business while carried on through trains, and not that there is a considerable class of business which gets exclusively through service.

It appears from the testimony of all witnesses on both sides, that the greater cost of handling short haul or "local train" business arises solely out of the difference in the character of the haul—the greater time taken, the greater amount of fuel and lubricants consumed, and the greater amount of work in handling the business on the part of train crews and station employees, and the numerous items grouped by all the roads under the grand division of operating expenses known as transportation expenses. Outside of those items there can be no extra cost in handling the business which receives local train service.

The "haul" is invariably given by witnesses as the cause of the extra cost. The "short haul" business is what is claimed to be more expensive. It is clear therefore, that whatever the extra cost is, it applies only to the haul or to the cost of conducting transportation, and does not apply to the other grand divisions of operating expenses, which have no relation to the haul.

The Master's finding that the excess cost intra per ton mile is 1.50%—not limited to haulage charges but applied to all operating expenses—makes the amount of extra expense wrongfully charged to intra business very large. For example, on the Northern Pacific for 1908 the "transportation expenses" (79—Elliott) are 58% of the total operating expenses. If the excess ton mile cost for intra, found by the Master were limited, as it should be to this part of the operating expenses, it would mean that 42% of the total freight expense should be apportioned between the two classes in proportion to their volume, as held in Judge Amidon's decision, and that 58% of the expenses should be apportioned per ton mile on

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the relation of 2.5 to 1. This would make the relation of all intra expenses to all inter expenses per ton mile as 1.87 to 1, considerably higher than the excess charged to intra in North Dakota and Missouri, and much higher than the excess cost found by Hillman.

On the Great Northern for 1908, the freight "Transportation Expenses" (47—Martin) were 48% of the total operating expenses, so that 52% of the expenses should be apportioned equally per ton mile, and 48% of the expenses should be apportioned on the basis of 2.5 to 1. On the basis of all expenses the relation would be 1.62 to 1.

If the amount of extra cost put upon the intra business by the Master's finding here was confined to the haulage charges alone in which it occurs it would amount substantially to a finding that the intra ton mile haulage charges are five times the inter ton mile haulage charges.

The difference in the cost found by the Master is made a fixed percentage of inter cost, regardless of the differences in the unit revenue per ton mile, the average unit cost, or the inter unit cost obtained by equating the ton miles; and regardless also of the proportion of the operating expenses incurred in conducting transportation. These differences necessarily affect the relation, and they are very marked between the Great Northern and the Northern Pacific. On the
443 Great Northern only 48% of the operating expenses were incurred in 1908 in transportation cost, while on the Northern Pacific the percentage was 58.

On the Great Northern the unit revenue intra (53—Ward) was ..... .01381 cents.
On the Northern Pacific (80—Elliott) it was..... .01191 cents.
On the Great Northern the inter unit revenue, 1908 was ..... .00661 cents.
On the Northern Pacific it was..... .00827 cents.

In the face of all these differences the relative cost of intra and inter business was, according to the Master, exactly the same.

Defendants also object and except to the finding that the cost of handling intrastate passengers is 15%, or any other per cent greater than the cost of handling interstate passengers.

VII.

Defendants object and except to the finding of the Master that the rates, and each of them, as applied to each of the roads involved, are confiscatory, for the reasons:

1. That upon a fair and reasonable valuation of the property of each company in the State, and a fair and reasonable division of the value of such property between freight and passenger business, and between the inter and intra business, would show that said rates, and each of them, would be entirely compensatory as to each of the roads involved.

2. As to the Northern Pacific Company, because the complaint in said action does not claim confiscation, except so far as the rates here involved affect interstate rates.

3. Because the complaints in each of the actions declare that at the time the rates involved were prescribed, the interstate rates of the company in Minnesota were fair and reasonable, and
444 the evidence in this case shows as to the freight business that the net intra ton mile revenue is greater than the net inter ton mile revenue.

VIII.

Defendants object and except to the finding of the Master that the dividends received by the Great Northern and Northern Pacific Companies from the Express Companies owned by each of said railroad companies respectively, and for which said railroad companies perform all of the said transportation, should not be reported as income.

Attached hereto is a more particularized and specific specification of the exceptions of defendants to the various findings contained in the Master's report.

We object and except to the matters in said report particularly stated, as well as to others not so particularly pointed out, as follows:

In Subdivision V, Relating to Interference with Interstate Commerce.

1. On page 16 of the Report, the findings that "the reductions in rates which may be charged by railroad companies for intrastate transportation within the State of Minnesota so made by its legislature and commission and challenged by these suits, are briefly as follows:

"Reduction in rates on general merchandise amounting to from 20 per cent to 25 per cent. (Commission's order of September 6, 1906.)

"Reduction in rates on grain, lumber, live stock and coal amounting to 7.37 per cent. (Session Laws of 1907, Chap. 232.)"

should be modified as follows: It should be made clear also that the reduction in rates there specified was a reduction in the maximum rates, which might be charged for the particular merchandise,
445 commodities or passengers, and not the percentage of reduction in the general revenue of the road received for business in Minnesota, nor the percentage of reduction in revenue received from the aggregate of the particular merchandise, passengers or commodities transported, and to which the rates apply.

2. On page 21 of the Report, the Finding or Statement of Opinion that "It must be true that there cannot be a dual control in so important a regulation as the fixing of rates, the same being of vital importance to the continued existence of the Company as a going concern."

3. The Finding or Statement, on page 23 of the Report, in No. 2, that "The State claims that the above section of the Federal Act referred to does not prohibit discrimination brought about in conducting state commerce because of the proviso appended to the first sec-

tion of the act, as follows: 'Provided, however, that the provision of this act shall not apply to the transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state and not shipped to or from a foreign country or to any state or territory, as aforesaid.'" There should be added to this Finding—"Also because it is beyond the power of Congress under the Constitution of the United States to legislate as to or to regulate or prohibit the making of rates by a State as to transportation beginning and ending and wholly within the State."

4. The Finding or Statement of Opinion, on page 30 of the Report, in No. 4, that "It always has been and is impracticable, and apparently is impossible, to operate the property of either of said companies situate in any State separately or to carry on transportation of passengers or freight local to a State separately from interstate passengers or freight touching that State." The evidence does not justify this.

446 5. The Finding, on page 31 of the Report, in No. 5, that "By far the larger proportion of the business of each of said companies is interstate; and by far the larger proportion of the business of each of said companies within the State of Minnesota is interstate." This Finding should be modified by showing the ton miles of freight local to the State for that year and the ton miles of interstate freight touching the State during that year and the passenger miles inter and intrastate within the State for the year.

6. The Finding or Statement of Opinion, on page 31 of the Report, in No. 6, that "For many years the conditions attending the transportation of passengers, of merchandise covered by the Order of September 6, 1906, or of the commodities covered by Chap. 232, Gen. Laws 1907, have been and they still are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota, North Dakota and South Dakota reached by the lines of railway operated by either of said companies; and whether such transportation has been or is of business local to a State, or interstate between any two of such states. (See Baird's testimony, N. P. Case, pp. 1436 to 1439, and pp. 1476-7; and Maguire's testimony, G. N. Case, pp. 792 to 795.)" The evidence in the case does not justify this.

7. The Finding or Statement of Opinion, on pages 31 and 32 of the Report, in No. 6, that "Each of said companies had, prior to the taking effect of the Order of September 6, 1906, and the two-cents maximum passenger fare law, maintained an equitable, that is, a relatively fair basis of rates for merchandise and passengers the transportation of which touched Minnesota without regard to whether the transportation was state or interstate between Minnesota and an adjoining State, and each of them still maintains such equable basis of rates for the transportation of commodities covered by Chap. 232, Gen. Laws 1907, regardless of whether it is local within

447 Minnesota or interstate between Minnesota and an adjoining State." The evidence in the case does not justify this.

8. The Finding or Statement of Opinion, on page 32 of the Report, in No. 6, that "Any substantial change in the basis of rates or

in any particular rates due only to the fact that the transportation was interstate or that it was local to a State would have been actual, undue and unjust discrimination in fact; and any substantial difference in rates for the transportation of passengers, merchandise or commodities maintained by either of said companies as between traffic local to the State of Minnesota and traffic which goes between the State of Minnesota and either of its neighboring states will constitute actual, undue and unjust discrimination in fact. (See N. P. Case, Elliott, p. 1320-1, and Baird, p. 2198-9.)" The evidence in the case does not justify this.

9. The Finding or Statement of Opinion, on page 32 of the Report, in No. 6, with reference to Superior, Wisconsin, and Duluth, Minnesota, that "Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates."

10. The Finding or Statement of Opinion, on pages 32 and 33 of the Report, in No. 7, with reference to the cities of Grand Forks, North Dakota, and East Grand Forks, Minnesota, Fargo, North Dakota, and Moorhead, Minnesota, and Wahpeton, North Dakota, and Breckenridge, Minnesota, that "Any substantial difference in rates as between the cities composing each pair would seriously damage if not wholly destroy the commerce of the city given the higher rate and would be an undue and unjust disadvantage in fact to it and an undue and unjust preference and advantage in fact for its neighboring city." The evidence does not justify this.

11. The Finding or Statement of Opinion, on page 33 of the Report, in No. 7, that "Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and
448 points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the Company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the Company's property in Superior." The evidence does not justify this.

12. The Finding or Statement of Opinion, on pages 33 and 34 of the Report, in No. 8, that "If these companies after the installation of the rates prescribed by the order for transportation within Minnesota had continued to maintain the former rates for transportation between Minnesota and adjoining states, the result would have been serious discrimination against localities in the neighboring states."

13. The Finding or Statement of Opinion, on pages 34 and 35 of the Report, in No. 9, that "These reductions were compelled by the necessary and direct effect of the operation of the order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth; Fargo, Grand Forks and Wahpeton could not have competed with Moorhead, East Grand Forks and Breckenridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the Order between these localities." The evidence does not justify this.

14. The Finding or Statement of Opinion, on page 38 of the Report, in No. 10, that "Maintaining rates, comparison of which shows this result, involves substantial, undue and unjust discrimination in fact against the interstate localities."

15. The Finding or Statement of Opinion, on page 38 of the Report, in No. 11, that "Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of
449 the locals based on the state line would have involved undue and unjust discrimination in fact." The evidence does not justify this.

16. The Finding or Statement of Opinion, on page 40 of the Report, in No. 12, that "Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time, necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the State carried on over the same rails and under the same conditions and involves necessarily undue and unjust discrimination in fact against localities westerly of the Minnesota-North Dakota boundary line." The evidence does not justify this.

17. The Finding or Statement of Opinion, on page 41 of the Report, in No. 13, that "The Northern Pacific Company cannot maintain its present commission-made rates between its eastern terminals and Moorhead and at the same time its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations." The evidence does not justify this.

18. The Finding or Statement of Opinion, on page 42 of the Report, in No. 14, that "Maintaining such a relation of rates would have involved undue and unjust discrimination in fact against the localities easterly and southerly of Minnesota, and an unjust and undue preference and advantage in fact for St. Paul." The evidence does not justify this.

450 19. The Finding or Statement of Opinion, on page 43 of the Report, in No. 15, that "The proof is clear that conditions attending transportation are substantially the same in Minnesota and North Dakota and whether the transportation is local to either State or interstate between them. If unjust and undue preference or advantage is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern companies have, prior to the taking effect of the Order, maintained an equitable basis of rates in the territory which these two states compose without regard to state lines"—also the Finding in this connection, that "The interstate rates from Minnesota westerly into North Dakota have been the same as for Moorhead easterly into Minnesota, and no conditions have existed, or do exist, which justify

a different basis of rates for east bound than for west bound transportation." The evidence does not justify this.

20. The Finding or Statement of Opinion, on page 44 of the Report, in No. 15, that "This disparity of rates for transportation under substantially similar conditions and which disparity increases as distance easterly from Moorhead increases, constitutes an undue preference and advantage to the eastwardly localities in Minnesota and a corresponding prejudice and disadvantage to the interstate westwardly localities in North Dakota." This is not justified by the evidence.

21. The Finding or Statement of Opinion, on page 44 of the Report, in No. 16, that "Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in face." This is not justified by the evidence.

22. The Finding or Statement of Opinion, on page 46 of the Report, in No. 17, that "It is apparent that unless undue and unjust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same relation between rates for different distances and dif-
451 ferent classes must be maintained on one line as on the other, and that notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the State of South Dakota the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached and that break was made within the State of Minnesota." This is not justified by the evidence.

23. The Finding or Statement of Opinion, on page 46 of the Report, in No. 17, that "The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the State of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates."

24. The Finding or Statement of Opinion, on page 47 of the Report, in No. 18, that "Substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists and constitutes undue and unjust discrimination in fact."

25. The Finding or Statement of Opinion, on page 48 of the Report, in No. 19, that "Whether discrimination in fact exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls and for the same distance westerly of St. Cloud." The evidence does not justify this.

26. The Finding or Statement of Opinion, on page 48 of the Report, in No. 19, that "Such disparity depends only on the fact that in the case of the higher rates the state boundary line is
452 crossed and on no other condition whatsoever, and it constitutes undue and unjust discrimination in fact not only against

the shipper at Fergus Falls, but as well against the consumer in the North Dakota towns in question." This is not justified by the evidence.

27. The Finding or Statement of Opinion, on pages 49 and 50 of the Report, in No. 20, that "Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota or Minnesota or whether it finds its termination at one of the Minnesota terminals of the companies or at Superior, Wisconsin.

"Conditions attending transportation are substantially the same as to all these commodities moving westwardly whether the shipment originates at a Minnesota point or at Superior, Wisconsin, or whether it finds its destination in Minnesota or North Dakota.

"Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal whether the shipment originates at Duluth, Minnesota, or at Superior, Wisconsin, and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for transportation of lumber whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportation of live stock whether the shipment originates in Minnesota, North Dakota or eastern Montana involves an undue and unjust prejudice and disadvantage in fact against the localities subject to the higher basis of rates and an undue and unjust preference and advantage in fact to the localities given the lower basis." The evidence does not justify this.

453 28. The Finding or Statement of Opinion, on pages 50 and 51 of the Report, in No. 20, that "Establishing the rates prescribed by Chapter 232, Gen. Laws 1907, and maintaining these rates for transportation wholly within Minnesota simultaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana would involve on the part of the Northern Pacific and Great Northern companies undue and unjust discrimination in fact against shippers, receivers and localities transacting the interstate business and would seriously impair the interstate business of the carriers. If the companies shall be compelled to maintain within Minnesota the rates prescribed by Chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota and Minnesota points and Superior to a substantial parity with the basis prescribed by Chapter 232 in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business as well as in order to protect the interstate business of carriers against serious impairment." This is not justified by the evidence.

29. The Finding or Statement of Opinion, on pages 51 and 52 of the Report, in No. 21, that "If the rates on coal prescribed by Chap-

ter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by Chapter 232,
454 from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by Chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed unless rates shall be similarly reduced from these various distributing centers to localities in these two districts." This is not justified by the evidence.

30. The Finding on page 53 of the Report, in No. 24, that "Prior to the taking effect of Chapter 97, Gen. Laws 1907, the general basis of rates for the transportation of passengers between any two points on the Northern Pacific System had been for some years three cents for passengers of twelve years of age and over and one and a half cents per mile for passengers under twelve years of age." The evidence does not justify this Finding.

Three cents per passenger mile for passengers of twelve years of age and over and one and a half cents per passenger mile for passengers under twelve years of age had been the maximum charge in Minnesota, but there were many passengers carried at lower rates and the average rate per passenger mile was much less.

31. The Finding or Statement of Opinion, on page 54 of the Report, in No. 24, that "These facts compel the conclusion that the necessary, immediate, direct effect of the operation of Chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead."

32. The Finding or Statement of Opinion, on page 54 of the Report, in No. 25, that "Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the company, one of which should cover the mileage in Minnesota, discrimination in fact against the
455 interstate passenger through Moorhead on the Northern Pacific still existed and was practiced. It existed against a passenger who, applying for a through ticket, did not know that the sum of the locals on Moorhead was less than the through rate, against the passenger with a trunk which he could not check through unless on a through ticket, against a passenger who was compelled to use a sleeping car." This Finding is not justified by the evidence.

33. The Finding or Statement of Opinion, on page 55 of the Report, in No. 25, that "The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile of the mileage in North Dakota. And the rates newly established by the Northern Pacific Company jointly with other companies for pas-

senger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota." This is not justified by the evidence.

34. The Finding or Statement of Opinion, on page 55 of the Report, in No. 25, that "These reductions in rates were compelled by the necessary, immediate and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the companies might transact interstate passenger business freely and without impairment of volume."

35. The Finding or Statement of Opinion, on pages 55, 56 of the Report, in No. 26.

36. The Finding or Statement of Opinion, on pages 56 and 57 of the Report, in No. 27.

456 37. The Finding or Statement of Opinion, on page 57 of the Report, in No. 28.

38. The Finding or Statement of Opinion, on pages 57, 58 and 59 of the Report, in No. 29, down to and including the second paragraph.

39. The Finding or Statement of Opinion, on pages 60 and 61 of the Report, in No. 29, that "The facts as found establish conclusively that the State in the rates prescribed by it is not kept within the limitations imposed upon it and has exceeded its constitutional powers in that such rates constitute a direct interference with and impose a burden upon interstate commerce and effect unjust discrimination as between interstate localities."

In Subdivision VI, Relating to Valuation.

40. The Conclusion or Opinion, stated on page 62 of the Report, that "It also appears from this and subsequent cases that it is the present value of the property which is to be taken as a basis of rates."

41. On page 64 of the Report, after having stated that what may have gone into the construction and completion of the Roads would not take into consideration the changed condition of the country since the original construction, its growth and prosperity, then the Conclusion, ruling "*in which the companies are entitled to share * * * and by reason of changed conditions and lapse of time it has little weight in arriving at the present values."

42. On page 65 of the Report, the Conclusion or Ruling with reference to the case of Missouri, Kansas & Texas Railway Company vs. Love, et al., that "Wherever applicable, it must control the Master in determining the questions here raised."

43. The Conclusion or Ruling of the Master that the revenue of the railroads other than that derived from the properties used

457 for the benefit of the public are not to be considered, which is expressed on pages 65 and 66 of the Report as follows: "In the light of this decision and others therein referred to and approved,

our first duty is to ascertain the fair value of the property devoted to the public service.

"To this end a large volume of testimony was produced before the Master on behalf of Complainants and the State, respectively, as to the reproduction cost of such property, and by such property is included only that which is used for the benefit of the public and which, with the revenue directly or indirectly derived from such use, is alone to be considered in determining the question of a reasonable rate. Other revenues and other properties the company may have, but as to them the public has no concern."

In Subdivision VII, Relating to Real Estate Values.

44. To the Finding upon pages 67 and 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Northern Pacific is $21,024,562.90. The value should have been found at not exceeding $9,498,099.27 (see Defendants' Exhibit OO—Morgan, Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said exhibit, and the cross examination of the witnesses referred to in the said Report as having made appraisals on behalf of Complainants). If the cost of reproduction is to be the basis for valuation, not only should the values of the property as given by Mr. Morgan be the extreme limit of the values to be taken, but the addition of 5 per cent to the appraisal of the St. Paul and the Minneapolis properties for cost of acquisition and consequential damages and of 25 per cent to the appraisement of Duluth property for railway value, cost of acquisition and consequential damages is arbitrary and improper, and not warranted either in law or in fact. The valuation found by the Master also includes the value of lands not in use for railroad purposes at the present time.

458 45. To the Finding on page 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Great Northern is $25,172,630.80. The value should have been found at not exceeding $7,493,250.41 (see Defendants' Exhibit C—Morgan, State's Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said Exhibit and the cross examination of the witnesses referred to in the said report at this point as having made appraisements on behalf of Complainants). The same reasons given in support of the objection No. 44 apply equally to this.

46. To the Finding on page 68 of the Report, that the value of the lands for right of way, for yards and terminals of the Minneapolis & St. Louis Road is $5,999,397.90. The value should have been found at not exceeding $1,872,522.04 (see Defendants' Exhibit K—Morgan, Estimate B, and the testimony of Mr. Morgan relative to his valuation given in said Exhibit and the cross examination of the witnesses referred to in the said report at this point, as having made appraisements on behalf of Complainants). The reasons given in support of objection 44 apply here.

47. The Master made no deductions from valuations for street crossings or parts of streets used for right of way held under rights

acquired from the city authorities without acquisition of the fee as is made clear in the Report, on page 74, at which point he states he has made no deduction therefor, and says: "For railroad purposes these rights are substantially as valuable as if held under absolute title. They are permanent in character and in case of reproduction would cost practically as much as private property."

48. The Master found the values of right of way, etc., outside of the terminals, by taking 75 per cent of the valuations as fixed by complainants' witnesses as the fair reproduction value of such property of the Northern Pacific and Great Northern railways as
459 appears from the statement on page 75 of the Report—"Upon careful consideration of the evidence and all the circumstances thereby disclosed bearing on the question, 75 per cent of the valuations as fixed by complainants' witnesses has been determined upon as the fair reproduction value of the property in the Northern Pacific and Great Northern cases."

This method is arbitrary, is not based upon any evidence and includes much which is not proper to be included in the valuation.

49. The Finding on page 75 of the Report, that the value of the grading, clearing and grubbing in the Northern Pacific case is $12,331,541.52. It should have been found as not exceeding $7,695,858.70 (see Defendants' Exhibit OO—Morgan, Estimate B, his testimony explaining the valuation there given, and the cross examination of the Complainants' witness Darling with reference to grading, clearing and grubbing).

50. The Finding on page 75 of the Report, that the value of the grading, clearing and grubbing in the Great Northern case is $21,685,802. It should have been found at not more than $16,531,191.24 (see Defendants' Exhibit C—Morgan, Estimate B, also testimony of the witness Morgan, with reference to said valuation and the cross examination of the Complainants' witness Hogeland in relation thereto.)

51. The Finding on page 76 of the Report, that the value of the grading, clearing and grubbing in the Minneapolis & St. Louis Road is $2,551,690. It should have been found as not more than $1,867,784.66 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation and the cross examination of Complainants' witnesses relative thereto).

52. The Finding on page 76 of the Report, that the value of the protection work, rip rap and retaining walls in the Great Northern Company is $850,069. It should have been found at not
460 more than $522.498.25 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said valuation and the cross examination of Complainants' witness Hogeland relative thereto).

53. The Finding on page 77 of the Report, that the value of the protection work, rip rap and retaining walls of the Minneapolis & St. Louis is $52,240. It should have been found as not exceeding $40,370 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation, and the cross examination of Complainants' witness Cutler relative thereto).

54. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Northern Pacific case is $3,657,576.70. It should have been found as not exceeding $1,424,725.95 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said valuation; also the cross examination of Complainants' witness Darling and Complainants' other witnesses relative to the values of cross ties and switch ties).

55. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Great Northern is $5,460,809. It should have been found as not exceeding $2,443,636.30 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said valuation; also the cross examination of Complainants' witness Hogeland, and Complainants' other witnesses relative to the value of cross ties and switch ties).

56. The Finding on page 78 of the Report, that the value of the cross ties and switch ties in the Minneapolis & St. Louis case is $1,149,829. It should have been found as not exceeding $530,726.56 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his valuation, and the cross examination of Complainants' witness Cutler and Complainants' other witnesses as to the value of cross ties and switch ties).

461 57. The Finding on page 78 of the Report, that the cost of ballast in the Northern Pacific case is $1,960,969. It should have been found as not exceeding $1,266,932.79 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said values and the cross examination of Complainants' witness Darling, and other witnesses who testified as to cost of ballast and amount thereof).

58. The Finding on page 79 of the Report, that the value of the ballast in the Great Northern case is $3,861,360. It should have been found as not exceeding $2,870,472.43 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining the said values and the cross examination of Complainants' witness Hogeland, and other witnesses who testified as to value of ballast and amount thereof).

59. The Finding on page 79 of the Report, that the value of the rails in the Northern Pacific case is $5,645,307.73. It should have been found as not exceeding $3,552,777.93 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining his said valuation, and the testimony of Complainants' witness Darling as to the valuation and amount of rails in Northern Pacific Road given in his direct and cross examination).

60. The Finding on page 79 of the Report, that the value of the rails of the Great Northern Railway is $9,053,977. It should have been found as not exceeding $6,693,565.02 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation and the testimony of the witness Hogeland on direct and cross examination in the Northern Pacific case as to value of rails, and testimony of the Complainants' witness Hogeland on cross examination as to cost and amount of rails).

61. The Finding on page 80 of the Report, that the value of the rails in the Minneapolis & St. Louis case is $1,540,392. It
462 should have been found as not exceeding $1,226,638.94 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his said valuation and the cross examination of Complainants' witness Cutler, as to rails and the testimony, direct and on cross examination, in the Northern Pacific case, of witness Darling).

62. The Finding on page 80 of the Report, that the track fastenings in the Northern Pacific Case were of the value of $727,228.37. It should have been found as not exceeding $473,183.14 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Darling as to track fastenings).

63. The Finding on page 80 of the Report, that the value of the track fastenings in the Great Northern Case were of the value of $2,087,615. It should have been found as not exceeding $1,493,-344.07 (see Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Hogeland, as to track fastenings).

64. The Finding on page 80 of the Report that the value of track fastenings in the Minneapolis & St. Louis Road is $258,561. It should have been found as not exceeding $198,337.55 (see Defendants' Exhibit K—Morgan, and his testimony explaining his said valuation, and the cross examination of Complainants' witness Cutler, as to track fastenings).

65. The Finding on page 80 of the Report, that the value of the switches, frogs and railroad crossings in the Northern Pacific road is $303,717.80. The value should have been found as not exceeding $176,889.59 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Darling, relative thereto).

66. The Finding on page 80 of the Report, that the value of the switches, frogs and railroad crossings in the Great Northern
463 case is $300,519. The amount should have been found as not exceeding $199,146.11 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Hogeland, and other witnesses).

67. The Finding on page 81 of the Report, that the value of the switches, frogs and railroad crossings in the Minneapolis & St. Louis case is $66,807. The amount should have been found as not exceeding $42,073.48 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining value and cross examination of Complainants' witness Cutler).

68. The Finding on page 81 of the Report that the value of the track laying and surfacing in the Northern Pacific case is $1,600,-591.56. It should have been found as not exceeding $792,636 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining the said valuation and cross examination of Complainants' witness Darling).

69. The Finding on page 81 of the Report, that the value of the track laying and surfacing in the Great Northern case is of the

value of $2,207,753. It should have been found as not exceeding $1,366,615.25 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining said valuation, and testimony on direct and cross of the witness Darling in the Northern Pacific case, and cross examination of Complainants' witness Hogeland).

70. The Finding on page 83 of the Report, that the value of track laying and surfacing in the Minneapolis & St. Louis case is $384,751. It should have been—as not exceeding $251,917.80 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining the said valuation, and the testimony of the witness Darling, in Northern Pacific case, as to track laying and surfacing, and of other witnesses who testified upon the question).

464 71. The Finding on page 83 of the Report, that the value of the bridges, trestles and culverts in the Northern Pacific case is $3,586,053. The value as found should have been found as not exceeding $1,811,169.31 (see Defendants' Exhibit OO—Morgan, Estimate B, testimony of the witness Morgan explaining his said valuation, and cross examination of the Complainants' witness Darling relative thereto. The value as found by the Master was arbitrarily arrived at and is not justified by the evidence in the case).

72. The Finding on page 84 of the Report, that the value of the bridges, trestles and culverts of the Great Northern case is $6,664,729. The value should have been found as not exceeding $2,950,000 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his said valuation, and the testimony as to the value of omitted bridges. The value as found by the Master was arbitrarily arrived at, and is not justified by the evidence in the case).

73. The Finding on page 84 of the Report, that the value of the bridges, trestles and culverts in the Minneapolis & St. Louis case is $1,025,827. It should have been found as not exceeding $640,465.26 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his said valuation. The value as found by the Master was arbitrarily arrived at, and is not justified by the evidence).

74. The Finding on page 86 of the Report, that the engineering, superintendence and legal expense in the Northern Pacific Case was valued at $2,633,946. It should have been found at not to exceed $1,733,572.30 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony in explanation of the said valuation).

75. The Finding on page 86 of the Report, that the value of engineering, superintendence and legal expense in the Great Northern case was $3,867,040. It should have been found as not ex-

465 ceeding $2,470,383.13 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining his valuation).

76. The Finding on page 86 of the Report, that the value of engineering, superintendence and legal expense in the Minneapolis & St. Louis case, is $690,364. It should have been found at not more than $412,034.21 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining his valuation).

77. The Finding on page 86 of the Report, that the value of the freight in construction of the Great Northern is $1,700,043. It

should have been allowed at not more than $752,547.41 (see Defendants' Exhibit C—Morgan, Estimate B, and the testimony of the witness Morgan, in explanation thereof, and the testimony of the Complainants' witness Darling in the Northern Pacific case, and of other witnesses as to the cost and proper allowance for this item.)

78. The Finding on page 87 of the Report, that there should be allowed for contingencies in the Northern Pacific Case $3,710,479. There should have been allowed not to exceed $2,668,851.89 (see Defendants' Exhibit OO—Morgan, Estimate B, and his testimony explaining this valuation).

79. The Finding on page 87 of the Report, that there should be allowed for contingencies in the Great Northern case $4,367,826. There should have been allowed not to exceed $3,868,335.38 (see Defendants' Exhibit C—Morgan, Estimate B, and his testimony explaining this valuation).

80. The Finding on page 88 of the Report, that there should be allowed in the Northern Pacific case, for interest during construction, $7,386,215. No amount whatever should be allowed, and if any amount is to be allowed it should be upon a lower value than found by the Master.

81. The Finding on page 88 of the Report, that there should be allowed in the Great Northern case for interest during con-
466 struction, $17,880,150. No amount whatever should be allowed, and if any amount is to be allowed, it should be upon a lower value than found by the Master.

82. The Finding on page 88 of the Report, that there should be allowed for the Minneapolis & St. Louis case $1,834,880 for freight on construction material, contingencies and interest during construction. The amount should have been allowed at not exceeding $767,446,41 (see Defendants' Exhibit K—Morgan, Estimate B, and his testimony explaining said allowance in his said Exhibit). Interest during construction is not a proper item to be allowed under any circumstances.

83. The Finding on page 88 of the Report, allowing in the Northern Pacific case $2,204,342 for interest in terminal properties. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

84. The Finding on page 89 of the Report, allowing in the Great Northern case $1,186,191 for interest in terminal property. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

85. The Finding on page 90 of the Report, allowing in the Minneapolis & St. Louis case $1,186,191 for interest in terminal properties. On the evidence in the case and as shown in the said Report itself, no allowance whatever should be made for this item.

86. The Finding on page 92 of the Report, that the value of the physical properties of the Northern Pacific Railroad in Minnesota is $90,204,545. It should have been found as not exceeding $48,141,074.01 (see Defendants' Exhibit OO—Morgan, Estimate B, and the testimony in support thereof, including cross examination of Complainants' witnesses; and interest during construction should be

excluded; also adaptation and solidification, and value of subsidiary properties).

467 87. The Finding on page 94 of the Report, that the value of the physical properties of the Great Northern in Minnesota is $138,425,291. It should have been found as not exceeding $70,231,714.13 (see Defendants' Exhibit C—Morgan, Estimate B, and the testimony in support thereof, including the cross examination of Complainants' witnesses; and interest during construction should be excluded; also adaptation and solidification and value of subsidiary properties).

88. The Finding on page 96 of the Report, that the value of the physical properties of the Minneapolis & St. Louis is $21,608,464. It should have been found at a value not to exceed $11,083,744 (see Defendants' Exhibit K—Morgan, Estimate B, and the testimony in support thereof, including cross examination of Complainants' witnesses; and interest during construction should be deducted; value of subsidiary properties and adaptation and solidification should be excluded).

In Subdivision VIII, Relating to Depreciation.

89. The Conclusion or Statement of Opinion, on page 98 of the Report, that "In view of all the foregoing considerations it follows without question there should be no deductions on account of depreciation." These defendants assert not only that it does not follow "without question," but also that it does not follow at all, that deductions should not be made on account of depreciation. Deductions should be made on account of depreciation.

In Subdivision IX, Relating to Stocks and Bonds as Affecting Value.

90. The Finding or Ruling on page 99 of the Report—"That value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property, or as a basis for rate making."

468 91. The Finding or Conclusion on page 99 of the Report, that the market value of stocks and bonds of the Minneapolis & St. Louis Road in 1908, $22,600,197, apportioned to Minnesota on the basis of the proportion of the mileage owned by the Company in Minnesota to its total mileage owned gives a valuation one-fifth less than the value of the property as conceded by the State, i. e., these defendants. The value conceded by the State in round numbers is $11,000,000 only.

In Subdivision X. Relating to Original Cost of Construction.

92. The Finding on page 102 of the Report, that the cost of construction of the Northern Pacific Road is $312,243,555. The amount should be found as not exceeding $251,853,509.50 (see Defendants' Exhibit V—Gray, deducting amounts paid for improvements and betterments out of earnings. Mr. Gray's testimony, Volume 2, pages 648, 649).

93. The Finding on page 104 of the Report of the amount of money put into the construction of the Great Northern Road as $295,401,213. The amount should have been found at not exceeding $246,652,801.13 (Complainants' Exhibits K, K-1, K-7, K-8, K-9).

94. To the Conclusion or Ruling on page 104 of the Report, that "Rates are not to be predicated on original investment."

95. The adoption by the Master as stated by him on page 106 of the Report, of the cost of reproduction new as the basis upon which to predicate rates.

In Subdivision XI, Relating to Public Demand for These Roads.

96. To the Conclusion or Ruling of the Master as to the Minneapolis & St. Louis Railroad, on page 108 of the Report, that "Necessarily to get business its rates must conform to those existing on other roads wherever competition is an element, but when this does
469 not exist it is entitled to rates not so controlled by competition, and within reasonable limits must, to exist, be given a free hand in the conduct of its business."

In Subdivision XII, Economy of Management.

97. The Conclusion or Finding on Page 109 of the Report, that "If the convenience and demands of the public were disregarded greater economy could doubtless be exercised. Full cars and long trains at fewer intervals, would be a great saving of cost and to this end produce could be stored in elevators awaiting shipment under the most economical conditions. Needless to say, that this would result in great public inconvenience and dissatisfaction and recourse to such methods is unthinkable. The carrier must properly yield to public demand and recoup for loss on other portions of its business."

98. The Finding on pages 109 and 110 of the Report, that "It is proper for the carrier not only to provide itself with ample facilities for the sufficient conduct of its present business, but also to anticipate demands soon to be made as the country becomes more prosperous, and it is entitled to revenue sufficient for such purpose.

"Having these considerations in mind, it does not appear that the service rendered or the property acquired and held for present and prospective needs are unreasonable or excessive, or that any property has been improperly included as a basis of cost of reproduction for rate making purposes."

In Subdivision XIII, Valuations of Entire System.

99. The Finding on page 111 of the Report, that the value of the reproduction of the entire system of the Northern Pacific Railway Company, *as* $452,666,489. It should have been found not to exceed $300,000,000.

470 100. The Finding on page 111 of the Report, that the value of the cost of reproduction of the Great Northern System *as* $457,121,469. It should be found at a sum not exceeding $350,000,000.

In Subdivision XIV, Division of Property Values Between Freight and Passenger Business, Inter and Intra.

101. To the Conclusion or Ruling on page 112 of the Report, in effect, that the passenger rates and the freight rates must each stand or fall by themselves and the value of the property for the purpose of determining the validity of the rates be divided between freight and passenger business, but expressed in the Report as follows:

"It is inequitable that the traveling public largely on pleasure bent should cast any part of the expense it incurs on the freight business which has to do almost altogether with traffic in which the public as a whole is directly interested.

"On the other hand, it has never been claimed that the latter should be relieved at the expense of the former, and the cases all recognize the propriety of separation upon an equable basis as near as may be."

102. The Finding or Conclusion or Ruling, on page 113 of the Report, that "Of course, any division of property value between the two classes of business, freight and passenger, must be an approximation, but one made on the relation of gross revenue derived from each kind of business has been uniformly accepted as the fairest all things considered in all rate cases heretofore judicially determined. * * * The revenue basis is not ideal, but it has an element of certainty possessed by no other and is no more objectionable in other respects." The true basis for a division between freight and passenger would be upon the basis of the use made of the property by each class of business. The railroads could have produced evi-
471 dence showing the use made by each class of business and thus have afforded the best, if not the only, proper basis for a division of value. They did not do so.

103. The division of the values of the property of the Northern Pacific Railway upon the basis of the gross earnings from freight business in the State and passenger business in the State, as set forth in the Report at page 114. The true division should be made upon the basis of the use for freight business and passenger business. But if we concede that the division must be made upon the basis of gross earnings because the evidence affords no basis upon which to divide upon the basis of use, yet the value so divided is far in excess of what it should be, as appears from objections hereinbefore set out.

104. The apportionment of the value of the Northern Pacific property theretofore assigned by the Master to freight business and passenger business between the intra and interstate business on the gross earnings basis, as appears on pages 114 and 115 of the Report. The division should be made upon the basis of use.

Exhibit 80—Elliott shows the intrastate ton miles and the interstate ton miles for the year, from which it can be computed that the intrastate ton miles did not exceed 12 per cent of the total ton miles for the State. 12 per cent of the value of the property used for intrastate freight business upon the basis of the Master's Finding of total value, would be $7,973,468.40 instead of $10,867,837 as found by the Master. It also shows that it was used to produce 52,317,320 intrastate passenger miles, 100,930,180 interstate passenger miles or 34.2 per cent for intrastate.

105. The summary of apportionment of values to different classes of business in Minnesota in the Northern Pacific case, as set forth on page 116 of the Report for reasons which are fully apparent from objections hereinbefore set out.

472 106. The division of the total value of the Great Northern properties in Minnesota between freight business and passenger business on gross earnings basis as set forth on pages 116 and 117 of the Report, for the reason that the best, if not the only, true basis for making such division is that of the use made of the property in each class of business, and the Railroad Company could have furnished evidence as to that use in such way as to enable a proper division to be made upon that basis. But, inasmuch as it did not do so, if the division is to be made upon the basis of gross earnings, the value of the whole property, as found by the Master, is excessive, as appears from objections heretofore set out.

107. The apportionment of the value of the Great Northern property theretofore assigned by the Master to freight business and passenger business between the intra and interstate business on the gross earnings basis, as appears on page 117 of the Report. The division should be made upon the basis of use.

Complainants' Exhibit 53—Ward shows the ton miles intrastate and the ton miles interstate from which it appears that in the intrastate freight business, the use of the property was 8 per cent of the use for the entire freight business of the State, i. e., 8 per cent of the total ton miles were intrastate. The value assigned to the total freight business of the State by the Master is excessive, as appears from objections heretofore set out, but upon that valuation the amount to be charged to the intrastate freight business would be $8,704,182.32 instead of $16,442,200, as found by the Master. Complainants' Exhibit 53—Ward also gives the intrastate passenger miles and interstate passenger miles, from which it may be computed that substantially 50 per cent thereof is used for intrastate passengers. Upon the basis of the valuation found by the Master for Minnesota passenger business this would increase the value

473 assigned by him in his Findings to intrastate passenger business, but upon a proper valuation the value would be much less than that assigned by the Master.

108. The Summary of apportionment of total value to different classes of business for the Great Northern Road, as shown on page 118 of the Report. The particular reasons of the objection to this summary are specified in particular objections heretofore set out.

In Subdivision XV, Reasonable Return.

109. The Finding, Conclusion or Ruling on pages 119 and 120 of the Report, that "It follows therefore that such valuation is as much an element of rate making and is entitled to the same consideration as the operating expenses of the Company. The theory that it is entitled to some return, the amount thereof to be adjusted by the Legislature regardless of property values devoted to the public service, must be rejected. Any rate which will not produce a full and

fair return is unreasonable and is confiscatory to the extent that it comes short of producing such return and is a taking of property from the carrier class and giving it to the persons served without compensation."

110. The Finding, Conclusion or Ruling on page 122 of the Report, that "Under the conditions disclosed in this case the companies are entitled to a net return of 7 per cent upon the value of their property as herein found."

In Subdivision XVI, as to Net Revenue.

111. The Finding or Determination on page 126 of the Report, that "The method of division of common cost between the freight and passenger business made by the Northern Pacific Company and the Great Northern Company with respect to traffic on their respective roads most nearly approximates an accurate result,"
474 and the adoption thereof by the Master for the purpose of division in the Northern Pacific and Great Northern cases.

In Subdivision XVII, as to Net Return of Property Valuations Assigned to Intrastate Business.

112. The Finding on page 133 of the Report, that "The weight of testimony that the cost per ton mile of doing state freight business is at least two and a half times as much as is such cost in doing interstate freight business in Minnesota, and the testimony would sustain, if it does not compel, a finding that such relative cost is as three to one. He also finds from the evidence that the cost per passenger-mile in the state passenger business is at least 15 per cent greater than such cost in the interstate passenger business in Minnesota." The Master should have found that the cost of doing intrastate freight business per ton mile, in the Northern Pacific case, does not exceed 1.5 times the cost per ton mile for intrastate freight, (testimony of the witness Johnson Volume 7, pages 4111 to 4121; testimony of witness Hillman, Volume 6, pages 3301 to 3313, 3317 to 3322, 3401 to 3405; also 4154, and Exhibits 3-M—Hillman, Tables 6, 7 and 9 when re-stated, as required by the testimony of Mr. Hillman at Volume 7, page 4154); and in the Great Northern case does not exceed 1.7 times per ton mile cost of inter for intrastate freight (Defendants' Exhibit G-7—Hillman, Complainants' Exhibit 53—Ward); and for the Minneapolis & St. Louis that it costs more per ton mile for interstate freight than it does for intrastate freight (Defendants' Exhibit L—Hillman, Defendants' Exhibit M—Hillman, Defendants' Exhibit L—Hillman, Table 5); and the relation of cost of passenger business is for Northern Pacific intra 1.1119 times inter passenger mile (Defendants' Exhibit 3-M—Hillman, Table 13); for Great Northern for intra 1.0513 times the cost inter passenger
475 mile (Defendant' Exhibit G—Hillman, Table 4, Complainants' Exhibit 53—Ward).

113. The division, in the Northern Pacific case, of the miscellaneous freight and passenger earnings between inter and intrastate

business made by the Master on pages 134 and 135 of the Report, the same being made upon the basis of transportation revenue. The evidence does not disclose any basis for a division thereof, except as it may have been assigned by the defendant railroad company. The defendant railroad company in its report to the State has assigned these miscellaneous earnings as between inter and intra, giving a much larger portion thereof to the intrastate business than the Master gives in his Report. The defendants are entitled to have the intrastate business credited with the amounts of miscellaneous earnings so reported to the State by the railroad companies, and also its share of income not from operation. (Defendants' Exhibit 3-V—Hillman.)

114. To the division made by the Master, of operating expenses between freight and passenger business, on page 136 of the Report, assigning $5,343,718.25 to freight and $2,311,631.95 to passenger. The division should be made upon the same basis or in the same proportion as Defendants' Exhibit 3-M—Hillman, Table 4, Column 5.

115. The division made by the Master, in the Northern Pacific case, of the total freight operating expense between intrastate and interstate freight on page 139 of the Report, wherein he shows $1,355,273.82 to intrastate and the remainder to interstate. The total amount so divided is less than it should be, because an excessive amount was assigned to passenger business, as appears from objections hereinbefore set out, and it is divided upon the basis of too great an excess of cost for intra over interstate freight.

116. The division made in the Northern Pacific case, of operating expense between intrastate passenger and interstate passenger, on page 140 of the Report. The amount of the total expense so
476 divided is in excess of what it should be, as appears from objections hereinbefore set forth, and too great an excess cost over interstate is assigned to intrastate business.

117. The Finding of the Master on pages 144 and 145 of the Report that the various statements introduced in evidence by the defendants to show that the net Minnesota interstate freight and the Minnesota interstate passenger incomes in the business of the fiscal year ending June 30, 1907, failed to show that the rates complained of were not confiscatory. The evidence does not justify this and it is for the Complainants to prove that the rates are confiscatory, and not for defendants to disprove it.

118. The division of the earnings and operating expenses in the Great Northern case as made on pages 145, 146, 147, 148, 149, of the Report in the following respects: It does not include or give the intrastate business its share of the general income of the road not from operation.

It divides the miscellaneous freight and passenger earnings between intrastate and interstate business upon the basis of transportation revenue; whereas, the evidence affords no basis for such division, and the railroad, in its report to the State, specifically assigned the greater part of these earnings as between intrastate and interstate business, and the defendants are entitled to the benefit of the division thereof so made by the railroads.

In the division of operating expenses between freight and passenger, an excessive portion thereof is assigned to passenger.

In dividing the freight operating expense between intrastate and interstate freight too great an excess cost of intrastate freight per ton mile over interstate freight per ton mile, and of cost intra passenger mile over interstate passenger mile is assigned to intrastate
477 business. The total amount of freight operating expense assigned between interstate and intrastate is excessive, as appears from objections above made.

119. The sum of $92,645.87 allowed by the Master, on page 151 of the Report for outside operations to be divided between intrastate passenger business and interstate passenger business on the passenger earnings basis, is insufficient. The amount should have been not less than $132,700 (Exhibit I—Hillman).

120. The net intrastate freight income found by the Master as stated on page 134 of the Report at $898,997.81 is too small. The net intrastate freight income should have been found to be not less than $1,150,916.99.

121. The Finding or Conclusion of the Master on page 157 thereof. "As hereinbefore stated, the results obtained by the employment of his (Mr. Hillman's) methods of division of operating expenses are found not to be correct, fair or just."

122. The Finding set forth on page 158 of the Report, that the total value of the property of the Minneapolis & St. Louis Company used for the year ending June 30, 1907, in the conduct of its business in Minnesota is $21,608,464. The amount should have been found as not in excess of $11,083,744.12.

123. The Finding, Conclusion or Ruling on page 158 of the Report, that "Such total value may be fairly and justly apportioned between the freight business and the passenger business on the gross earnings basis—that is assigned to each such percentage of total value as the amount of the gross earnings of each bears to the total gross earnings of both. The value so apportioned to the freight and passenger business may in similar manner be justly and fairly divided on the gross earnings basis between the intrastate business and the interstate business of each." The division should be made
478 upon the basis of use. The railroad company had in its possession evidence of what that use was, though it did not see fit to give it to the Master.

124. The summary of the apportionment of total value to different classes of business in Minnesota for the Minneapolis & St. Louis Road given on page 159 of the Report. The total value of the property is excessive, as set out in objection No. 123. The apportionment of the value between freight and passenger business upon a gross earnings basis is not made upon the right principle, and therefore incorrect. The assignment of 22.61 per cent of the total value apportioned to the freight business is excessive. The assignment should be made upon the basis of the ton miles intra as compared with the total ton miles. This would assign to intrastate freight business 13.727 per cent of the total value of the property apportioned to the freight business (see Defendants' Exhibit L—Hillman, Table No. 5). The apportionment of 14.80 per cent of value

found for the entire passenger business to intrastate passenger business is made upon the wrong basis. It should be made upon the basis of passenger miles.

125. The Finding, or Statement of Opinion, on page 160 of the Report, that the amounts there stated as claimed by the defendants for the net income of freight and passenger business intrastate on the Minneapolis & St. Louis are in excess of the net income from all sources derived from the businesses over and above operating expenses and taxes; and that the method employed by the defendants for ascertaining the amount of operating expenses was not correct, fair or just and resulted in assigning to each of such class- of business an amount less than was in fact expended by the company in the conduct thereof.

126. The Finding on page 160 of the Report, that the total net earnings of the Minneapolis & St. Louis Company in Minne-
479 sota for the year 1907 from all sources which involved the use of property included in the valuation, was $895,977.66. The amount was much larger.

127. The Finding set forth on pages 159 and 161 of the Report as to the Minneapolis & St. Louis Road, that "The cost of conducting each class of the intrastate business covered by the rates complained of is greater in proportion to the revenue derived from each such class of business than was the cost of conducting the corresponding class of interstate business of said company in said year in said State and the amount of net income derived from each such class of intrastate business is less than sufficient to yield an annual return of 4.14 per cent upon the proportion of the value of the whole property which was used in the conduct of each such class of business and which is properly chargeable thereto."

128. The Finding of the net earnings of the Minneapolis & St. Louis Road for the years 1903 to 1900, inclusive, for the system and for the State of Minnesota, as set forth in the Report on page 161 thereof. They are too little.

129. The Finding or Statement of Opinion on page 162 of the Report that "If the merchandise rates complained of had been in effect during the year ending June 30, 1907, the Minnesota intrastate revenue of the Minneapolis & St. Louis Company derived from the business covered by such rates would have been reduced $33,367.30, more than 19½ per cent of the revenue derived from such business."

130. The Finding or Statement of Opinion on pages 162 and 163 of the Report, that "on the volume of the business of the passenger service rendered by the Minneapolis & St. Louis Company within the State of Minnesota for the year ending June 30, 1906, the losses in revenue which would have resulted had the two cent pas-
480 senger law complained of been in effect, are intrastate passenger business in Minnesota $72,453., interstate passenger business in Minnesota $74,371."

131. The Finding or Statement of Opinion on pages 163 and 164 of the Report, in which the Master states the amount of loss in revenue which would have been suffered by the Minneapolis & St. Louis Road in the year 1906 if the Commodity Rates Act had been in effect. The amount stated is excessive.

132. The statements of the revenue of Minneapolis & St. Louis Company for June 30, 1907, and the division and apportionment of the miscellaneous revenue and to the division of the operating expenses between freight and passenger and between inter and intrastate freight business, and the statement of the net intrastate income freight and passenger, and the assignment or division of the value of the property between inter and intra (see pages 165 to 168 of the Report). The same reasons for objection exist as hereinbefore stated in objections to the like divisions and apportionments in cases of the Northern Pacific and Great Northern Railways.

133. The Finding or Statement of Opinion on page 168 of the Report, that "Dividing the freight operating expense and the passenger operating expense in Minnesota between intrastate business and the interstate business, respectively, on the straight revenue basis, does not assign to either class of such intrastate business the full amount of operating expenses which was actually expended in the conduct thereof, and that consequently the rates of return on value * * * are in excess of the actual returns, respectively, which would have been earned if the rates complained of had been in effect during the whole of such fiscal year."

134. The Finding or Conclusion on pages 168 and 169 of the Report, that "It appears from the foregoing facts, and the Master finds that for the two years next prior to July 1, 1908, in
481 these three cases the revenue derived by the said defendant railway companies and each of them from the property thereof devoted to the public use in the operation of their respective lines of railway and the conduct of their business as common carriers of passenger and freight within and local to the State of Minnesota, were and that they still are inadequate and insufficient compensation for the property so used and the service rendered, and that the aforesaid rates prescribed by the Orders of the Railroad and Warehouse Commission and the Acts of the Legislature were and still are unreasonably low, unjust and confiscatory, and, in the immediate future and until there shall be very material changes in existing conditions not likely soon to occur, they will continue so to be, and that the enforcement of said orders and acts should be enjoined and restrained, as well because they are unreasonably low and confiscatory as because they constitute a burden upon and an interference with and a regulation of interstate commerce, as has been hereinbefore found and determined."

In Subdivision XVIII, Express Company Revenue.

135. The Finding or Conclusion on pages 169 to 171 to the effect that dividends received by the Northern Pacific Company and the Great Northern Company from their express business done through express companies owned and controlled by them is not to be included in their operating revenue, nor taken into account in determining the validity of the rates complained of.

482 *Decree.*

136. To each of the proposed decrees in that the decrees recommended to be entered should be decrees dismissing the Bills of Complaint.

GEORGE T. SIMPSON,
Attorney General.
EDWARD T. YOUNG,
EDMUND S. DURMENT,
Solicitors for Defendants.

Having carefully considered the foregoing exceptions and it appearing that the subject-matter thereof received full consideration by the Master in making up his report served on counsel, the said exceptions and each and every of them are hereby in all things overruled. Certain of the requests for further findings have been complied with, as will appear by the Master's Report to be filed in Court with the Clerk thereof in said several actions. The requests not complied with are found to be not material or relevant.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

NOTE.—Original Exceptions and Master's Rulings are filed in the Northern Pacific Case, only one copy having been served on the Master.

483 Circuit Court of the United States, District of Minnesota (Third Division).

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

EMMA B. KENNEDY et al.
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Minnesota Rate Cases.

Now come the defendants Charles F. Staples, Ira B. Mills, Charles E. Elmquist and George T. Simpson, and respectfully ask that the findings of the Master, as contained in his report, be amended in the following particulars:

484 I.

Amend first paragraph of tenth subdivision, at page 98, by showing face value of the stocks and bonds of the company, as well as their alleged average market value for a period of five years.

Complied with. C. E. Otis, Special Master.

II.

Amend paragraph on page 99 relating to the capitalization of the Great Northern Railway so as to show that at the time of the commencement of the action (Complt. par. VIII) the total outstanding capitalization of the Great Northern was

Stock	$140,577,500.00
Bonds	83,119,939.00
Total capitalization	$232,697,439.00

Complied with. C. E. Otis, Special Master.

That on June 30th, 1908, the date of the appraisement by the company, the outstanding capitalization (page 45 Annual Report 1959) was:

Stock	$209,962,750.00
Bonds	97,955,939.39
Total capitalization	$307,918,689.39

It does not appear that any of the additional capitalization issued since suit was commenced was used in the acquisition of additional properties in Minnesota.

Amend also the reference on page 102 to the Great Northern so as to read as follows:

"In the Great Northern case the balance sheet of the company of date June 30th, 1908, shows the book value of the railroad and its equipment for the entire system, devoted to the public service to amount to the sum of $291,414,415.34 (road $240,349,771.44; equipment, $51,064,648.90)."

Refused. C. E. Otis, Special Master.

485 An examination of the company's books and vouchers by the State's accountant (Exhibit "K"—Hillman, 1 to 7), shows the book cost of the road to June 30th, 1908, the same as above, $291,414,415.34, but also shows various items in the account which the State claims are fictitious or excess items, which should be deducted from the gross book cost in order to show the actual cost of the road. The principal item claimed to be fictitious is an arbitrary increase in the valuation of the property, and the capitalization in 1879, when the company's immediate predecessor, the Saint Paul, Minneapolis & Manitoba Company took over the properties from its predecessor the Saint Paul and Pacific Co. Mr. Hillman was unable to determine from the books whether the excess valuation of the property at that time was $12,126,342.19—which he claims is the minimum, or $21,347,040.70, which he claims is the maximum. No explanation of this transaction was offered by the company.

All subsequent items of alleged excess cost shown by the books are grouped by Hillman on Exhibit "K"—7 under two heads marked "A" and "B"; the only difference being that in the "A" group, the first item above is used as the claimed excess, and added to all subsequent items, while in the "B" group the second above item is used as the claimed excess.

Subtracting $48,243,614.21, the sum of the items constituting Hillman's estimate "A"—being the lesser of the two—it leaves the total book cost of the road and equipment as claimed by the State, $243,170,801.00. (Vol. 3, part 2, page 1855).

The reasons for the claim of the State appear on the Exhibits (Hillman "K" 1 to 7), and in Mr. Hillman's testimony, (Vol. 3, part 2, pages 1764 to 1910, Record).

The total track mileage of the road's entire system is 8,528.98, and of the part in Minnesota, 2,779.30, so that practically 32.6 per cent is in Minnesota. Taking this per cent of the above cost, gives $79,273,681 as the amount which the State claims was actu-
486 ally expended in construction and equipment of the road in Minnesota.

Mr. Drew, the Comptroller of the Great Northern offered explanations of some of the items claimed to be excess by Mr. Hillman. His testimony commences at page 1910, Vol. 3, part 2, of the Record. Some of the alleged excess items were not explained by the company.

Amend the findings in reference to the division of the value of the property between intra and interstate freight and intra and interstate passengers so as to show the relation, in the case of the freight, of the intra and inter ton miles in the State, and as to the passenger, the relation of the intra and inter passenger miles.

Refused. C. E. Otis, Special Master.

Respectfully submitted, GEORGE T. SIMPSON,
Attorney General.

EDWARD T. YOUNG,
EDMUND S. DURMENT,
Of Counsel.

487 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud, Defendants.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE Forest, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum, Defendants.

Consolidated.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Master's Supplementary Report to the Court.

488 To the Honorable the Judges of the Circuit Court:

Now comes Charles E. Otis, Special Master in each of the above entitled suits, and makes this his Supplemental Report and files the same with his original Master's Report to the Court with the Clerk thereof in said several suits.

Said Original Report herewith filed (save as modified and corrected as hereinafter stated) was completed and personally served

by copy on counsel of the respective parties at St. Paul, Minnesota, on the 21st day of September, 1910, and within 30 days after such service the counsel for the Complainants and the counsel for the answering Defendants severally served on the Master their respective exceptions to the said Report, all as provided in the order appointing the undersigned Special Master in said causes.

Counsel expressly waived argument of such exceptions before the Master. Thereupon the Master forthwith gave such exceptions and the subject-matter thereof careful consideration, and becoming satisfied that all of the matters covered by them had been fully considered by him in making up his Report so served, the Master overruled the said exceptions and each and every of them. Said exceptions and the Master's rulings thereon appended thereto are herewith filed.

At the request of counsel for the answering Defendants the Master has made some further findings. He has also made correction of some clerical errors found to exist in said Report so served on counsel. Said further findings and corrections do not substantially modify, change or affect any of the conclusions of the Master as set out in his Report so served. Such corrections and further findings, and where and how made, fully appear in the original manuscript of such Report, which will be filed herewith in the Northern Pacific case. The printed reports so to be filed in said several suits
489 are intended and are supposed to be exact reprints of the said amended Master's Report so in manuscript save that they have all been signed by the Master in his own hand.

All of which is respectfully submitted.

CHAS. E. OTIS,
Special Master.

Dated October 26, 1910.

490 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 21ST, 1910.

Monday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Hon. Charles A. Willard, U. S. District Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors, Respectively, of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Before Judge Sanborn.

This day come the parties to these causes by their respective solicitors, Messrs. How, Butler & Mitchell and Mr. Hale Holden appearing on behalf of the complainants, Mr. C. W. Bunn appearing on behalf of the Northern Pacific Railway Company, Mr. E. T. Young and Mr. Edward S. Durment appearing on behalf of the Attorney General and Railroad and Warehouse Commission, and the said causes

having been heretofore set down for hearing at this time and place, upon the exceptions of the complainants and defendants to the Special Master in Chancery's Report herein, the same now coming on,

491 Mr. Jared How opens and argues said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. C. W. Bunn argues said exceptions on behalf of the Northern Pacific Railway Company.

Mr. Hale Holden argues further upon said exceptions on behalf of the complainants.

And the argument of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and the same hereby are postponed and concluded until tomorrow morning at ten o'clock.

* * * * * * *

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,

Attest. HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

492 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 22ND, 1910.

Tuesday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes and the further trial thereis is resumed and proceeded with as follows—

Mr. Hale Holden resumes his argument upon said exceptions on behalf of the complainants.

Mr. Pierce Butler argues further upon said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon said exceptions on behalf of the complainants.

493 Mr. E. T. Young argues said exceptions on behalf of the defendant Attorney General.

And the hearing of said causes not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings

herein be and the same hereby are postponed and continued until tomorrow morning at ten o'clock.

Ordered: That this Court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

494 United States Circuit Court for the District of Minnesota,
Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 23RD, 1910.

Wednesday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of John S. Kennedy, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes and the further trial thereof is resumed and proceeded with as follows—

Mr. Edward T. Young argues said exceptions to the Court upon behalf of the Attorney General.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Edward T. Young resumes his argument upon said exceptions on behalf of the Attorney General.

Mr. Edmund S. Durment argues said exceptions on behalf of the Railroad and Warehouse Commission.

And the hearing of said causes not being concluded at the
495 hour of said adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Friday morning next at ten o'clock.

Ordered: That this Court do now adjourn until Friday morning next at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

496 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 25TH, 1910.

Friday morning.—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors, and the further trial thereof is resumed and proceeded with as follows, viz:

Mr. Edward S. Durment argues upon said exceptions on behalf of the Railroad and Warehouse Commission.

Mr. Pierce Butler argues upon said exceptions on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

Mr. Pierce Butler resumes his argument upon said exceptions on behalf of complainants.

497 Mr. Hale Holden argues further upon said exceptions on behalf of the complainants.

And the argument of said causes not being concluded at the hour of adjournment, it is by the Court Ordered that further proceedings herein be and the same hereby are postponed and concluded until tomorrow morning at ten o'clock.

Ordered: That this court do now adjourn until tomorrow morning at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

498 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, June Term, A. D. 1910.

NOVEMBER 26TH, 1910.

Saturday morning.—Court opened pursuant to adjournment.

Present:

Hon. Walter H. Sanborn, Circuit Judge.
Henry D. Lang, Clerk, By Louise B. Trott, Deputy.

Equity. No. 857.

DAVID C. SHEPARD
vs.
NORTHERN PACIFIC RAILWAY COMPANY et al.

Equity. No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE FOREST, and WILLIAM STEWART TOD, Executrix and Executors of the Will of JOHN S. KENNEDY, Deceased, and HENRY F. DIMOCK
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Equity. No. 870.

HENRY A. JAMES
vs.
GREAT NORTHERN RAILWAY COMPANY et al.

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY et al.

This day come again the parties to these causes by their respective solicitors and the further argument thereof is resumed and proceeded with as follows:

Mr. Hale Holden argues in conclusion upon said exceptions on behalf of the complainants.

Mr. Pierce Butler argues in conclusion on behalf of the complainants.

And here the Court takes a recess until two o'clock P. M.

The Court resumes proceedings at two o'clock P. M.

499 Mr. Jared How argues in conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties, said causes are duly submitted to and by the Court taken under advisement.

Ordered: That this Court do now adjourn until Monday morning next at ten o'clock.

A true record,
Attest:

HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

500 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Application and Order to Show Cause on the therein-named How, Butler and Mitchell, attorneys for the complainants therein named by handing to and leaving a true and correct copy thereof with Pierce Butler, a member of the above named firm of How, Butler & Mitchell personally at St. Paul, in said District on the 14th day of November A. D. 1910.

WM. H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Application and Order to Show Cause on the therein-named E. T. Young and E. S. Durment attorneys for the defendants therein named by handing to and leaving a true and correct copy thereof with each of the above named E. T. Young and E. S. Durment personally at St. Paul in said District on the 14th day of November A. D. 1910.

WILLIAM H. GRIMSHAW,
U. S. Marshal,
By S. J. PICHA, *Deputy.*

501 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

EMMA B. KENNEDY and Others, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

HENRY A. JAMES, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON and Others, Defendants.

} Consolidated.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON and Others, Defendants.

Application for Allowance of Master's Compensation.

To the Honorable the Judges of said Court:

Now comes Chas. E. Otis, Special Master in Chancery in the above causes and respectfully represents.

By an order of this Court of date and entered May 4th, 1908 your petitioner was appointed Special Master in the above and six other like causes to take and report the testimony and recommend to the Court judgments to be entered therein. Of the nine cases so referred, by arrangement of Counsel the above three were taken
502 up and proceeded with, the remaining six to remain in abeyance until the first mentioned cases shall have been finally determined. In the three causes so selected for hearing the Master has made his final report to the Court and completed his labor therein, and now respectfully requests the Court to fix the compensation he shall receive for services so rendered by him and which in brief have been substantially as follows:

1. The Master prepared, took and filed his oath of office in each of said causes so referred to him, conferred with counsel of the respective parties as to course of procedure and order of testimony therein and prepared and served summons on all the counsel for the purpose of initiating the work, resulting in a hearing and order that the taking of testimony should be first begun in the Northern Pacific Case and the time and place therefor was definitely fixed. A week's time of the Master was taken up with this preliminary work.

2. Pursuant to arrangements so made the taking of testimony in the Northern Pacific Case was commenced on the 4th day of June, 1908 and was diligently proceeded with from day to day and from time to time until all testimony special to that case had been taken, ending on the 25th day of January, 1910. The Master was actually engaged for ninety-nine days in the taking of testimony in this cause. The testimony so taken exclusive of exhibits comprises 4528 typewritten pages. There were 168 exhibits, exclusive of many sub-tables and Public Records.

3. Later and on August 4th, 1908, when there was a temporary suspension of proceedings in the Northern Pacific Case, and taking of testimony was commenced in the Minneapolis and St. Louis case and was in like manner proceeded with and finally closed on the 31st day of May, 1910. The Master was actually engaged for thirty-one days in the taking of testimony in this cause. The tes-
503 timony so taken comprises, exclusive of Exhibits 1350 typewritten pages. There were 49 Exhibits exclusive of many sub-tables and Public Records.

4. The taking of testimony in the Great Northern Case was commenced before the Master on the 15th day of March, 1909, and was in like manner proceeded with and concluded on the 27th day of January 1910. The Master was actually engaged for forty-two days in the taking of testimony in this cause. The testimony so taken, exclusive of Exhibits comprises 2148 typewritten pages. There were seventy-eoght Exhibits exclusive of many sub-tables and Public Records.

5. It was stipulated by counsel that the evidence submitted in any one of the cases so far as relevant and material to the issue in any of the other cases, should be received and considered as evidence in each case.

6. When the taking of testimony was finally concluded, by request of counsel the causes weree set down for oral argument before the Master and seventeen days *was* spent by him in listening to the arguments orally presented. Such oral arguments were taken down by the of-icial stenographer, at counsel's requesr and were by them revised and submitted to the Master and consisted of nearly 1500 typewritten pages. Arguments before the Master were concluded on the 29th day of July, 1910.

In addition to such oral arguments the respective counsel prepared and submitted to the Master four several printed briefs, amounting in the aggregate to 1163 pages, all of which, as well as the oral arguments and the transcription thereof, received the careful consideration of the Master.

7. From the time the Master was advised that his appointment was under consideration, which was the latter part of April, 1908, until his report was finally completed and submitted to the Court on October 29th, 1910, the Master devoted substantially his whole time and attention to the cases so referred, and in the performance of the duties so by the Court imposed upon him in connection there-
504 with. He at all times presided and supervised and directed the taking of testimony. At intervals when for convenience

of counsel, and to enable them to prepare for further examination and cross-examination, the taking of testimony was suspended, the Master himself was engaged in carefully reviewing the testimony as transcribed by the stenographer and the Exhibits submitted in connection therewith, causing corrections therein to be made as was from time to time required so that they should conform to the proceedings taken before the Master. He was further engaged in familiarizing himself with the testimony and with decisions and precedents bearing upon the many and difficult questions which the causes presented to the end that he might be prepared to return a full and just report as speedily as practicable after final submission. He at all times held himself ready to proceed at the request and convenience of counsel with the work before the Master, and as far — was practicable and consistent with its importance, strove to speed the trial and ultimate decision of the causes so submitted, and there has never been at any time any delay on his account, nor was any engagement or other matter personal to himself ever permitted to interfere with his duties and labors as Master. In this matter substantially his whole time for a period of two and one-half years has been by him devoted to his work.

In view of the foregoing matters and the great national and commercial importance of the questions submitted and the burden of responsibility so imposed upon the Master, he is of the opinion that his services in the three cases have been and are reasonably worth the sum of Twenty-five thousand dollars of which he has heretofore been paid and received the sum of seven thousand five hundred dollars; and he suggests that the compensation as fixed be apportioned as an expense in the three cases as may be agreed upon by counsel or determined by the Court to be just and equitable.

Counsel of the several parties have all been advised of the
505 claim here made by the Master and the amount thereof, and, as the Master is informed, desire that the matter be left to the judgment and discretion of the Court without a hearing thereon.

All of which is respectfully submitted.

Dated, St. Paul, Minn., Nov. 10th, 1910.

CHAS. E. OTIS,
Special Master.

On reading the foregoing application, and upon consideration it is ordered, that the parties to the suits specified in the caption to the foregoing application, show cause before the United States Circuit Court for the District of Minnesota, Third Division, at the Federal Building in St. Paul, Minnesota, on the 17th day of November, 1910, at 10 o'clock in the forenoon, why the foregoin- application should not be granted, and why the compensation fixed therein should not be apportioned equally between the cases against the Northern Pacific Railway Company, et al., The Great Northern Railway Company, et al., and the Minneapolis & St. Louis Railroad Company et al.

Let a copy of the application and of this order be served upon Messrs. How, Butler & Mitchell, attorneys for the complainants, and

Messrs. E. T. Young and E. S. Durment, attorneys for the defendants with all convenient speed.

WALTER H. SANBORN,
U. S. Circuit Judge.

Dated November 12, 1910.
St. Paul, Minnesota.

(Endorsed:) Application of Special Master for Compensation. Filed Nov. 28, 1910. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

506 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
GEORGE T. SIMPSON, IRA B. MILLS, CHARLES F. STAPLES, and CHARLES E. ELMQUIST, and Companion Cases, Defendants.

Consolidated.

In the Matter of the Application of the Master in the Above-entitled Action to Have His Fees for Services Therein Fixed by the Court.

The Undersigned, representing the State of Minnesota, which is the actual defendant in the above entitled action, and representing also formally the state officers who are named as defendants therein, hereby protest against the allowance of the claim made by the Master for a fee of Twenty-five Thousand (25,000) Dollars for his services in said cases.

We respectfully represent on behalf of our said clients, and the State, that the Master's claim is excessive, and out of all fair proportion to the value of his services.

This litigation in reporter's fees, the fees of expert witnesses, and in the printing of the enormous record has already incurred an expense which almost makes this class of litigation prohibitory. Whatever becomes of the cases ultimately, the costs are going to be a very heavy burden, and, therefore, no allowance should be made
507 for merely constructive services. The length of time consumed in trying these cases makes the employment of the Master different from a mere temporary service. The hearing of the cases did not take all of his time since the trials began, and compensation for that period in excess of that allowed by law for the same period to a judge of the court, seems clearly excessive. The fixing of the Master's fees rests in the sound discretion of the court. The court is familiar with the character and extent of the work

performed, and we desire only to ask the court to allow no more than reasonable compensation for the services rendered.

Respectfully submitted,

GEORGE T. SIMPSON,
Attorney General of Minnesota.

EDWARD T. YOUNG,
Of Counsel.

(Endorsed:) Objections of Att'y Gen'l Simpson to Master's fees. Filed Nov. 28, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

508 United States Circuit Court, District of Minnesota, Third Division.

(In Equity.)

DAVID C. SHEPARD, Complainant,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

EMMA B. KENNEDY and Others, Complainants,
vs.
GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON, and Others, Defendants.

The application of Honorable Charles E. Otis, Special Master in Chancery, in cases above entitled, for the determination and allowance of his compensation for his services therein, came on to be heard upon return of the order to show cause attached thereto. The attorneys for the complainants appeared but made no objection to the allowance of the fee. No one of the other parties, or of their attorneys, objected to its allowance, except that the written objection of Honorable George T. Simpson, and his counsel Edward T. Young, filed herewith, was submitted.

The Court is aware of the learning, ability and patience that were required to fitly consider and decide the questions of law and of fact which these cases present, and is familiar with the burden of
509 labor, care and responsibility the special master has borne, and after an examination of his report and of the printed volumes of the evidence, he personally heard, and upon reflection

It is ordered, that the compensation of the master for his services in these cases be, and the same is hereby fixed at the sum of Twenty-five thousand dollars ($25,000.00), and this amount is allowed therefor.

It is further ordered, that this amount be distributed so that ten thousand dollars ($10,000.00) thereof be allowed and paid in the cases against the Northern Pacific Railway Company, and others, ten thousand dollars ($10,000.00) in the case against the Great Northern Railway Company, and others, and five thousand dollars ($5,000.00) in the case against the Minneapolis & St. Louis Railroad Company, and others.

It is further ordered, that the respective railway companies above mentioned forthwith pay their respective shares of the unpaid balance of the compensation hereby allowed, and that the amounts thus paid abide the result of the suits and be taxed as costs and recovered, as may be directed by the subsequent orders or decrees of this Court.

WALTER H. SANBORN,
U. S. Circuit Judge.

St. Paul, Minnesota, November 28, 1910.

(Endorsed:) Order allowing Special Master's fees at $25,000.00. Filed Nov. 28, 1910. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

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SHEPARD
v.
NORTHERN PAC. RY. CO. et al.

KENNEDY et al.
v.
GREAT NORTHERN RY. CO. et al.

JAMES
v.
SAME.

SHILLABER
v.
MINNEAPOLIS & ST. L. R. CO. et al.

(Circuit Court, D. Minnesota, Third Division, April 8, 1911.)

(*Syllabus by the Court.*)

1. Constitution—Commercial Clause—Carriers—State Rates Violative of Commercial Clause:

The acts of the Legislature of Minnesota of April 4, 1907 (Gen. Laws 1907, c. 97 [Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2]), reducing passenger fares within the state about 33⅓ per cent., and of April 18, 1907 (Gen. Laws 1907, c. 232 [Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17]), reducing commodity rates within the state about 7.37 per cent., and the orders of its Railroad and Warehouse Commission of September 6, 1906, reducing general merchandise rates within the state from 20 to 25 per cent., and of May 3, 1907, reduc-

ing in rates within the state to distributing points, by their natural and necessary effect substantially burden and directly regulate interstate commerce, create undue and unjust discriminations between localities in Minnesota and those in adjoining states, violate the commercial clause of the Constitution (article 1, § 8), and are void.

2. Same—Rates Confiscatory:

These acts and orders which prescribe maximum fares and rates, that bring from their respective Minnesota intrastate businesses to the Northern Pacific Company an annual net income of only 2.909 per cent., to the Great Northern Company an annual net income of only 3.359 per cent., and to the Minneapolis & St. Louis Company an annual net income of only 2.47 per cent., of the respective values of their Minnesota properties devoted to those businesses, prohibit a fair return upon these values, take the properties of the companies without just compensation, violate the fourteenth amendment to the Constitution, and are void.

3. Constitution — Commercial Clause — Carriers—Rates—National Power to Regulate Interstate Commerce Exclusive and Paramount:

The power to regulate commerce among the states was granted by the people to the nation in the Constitution, is exclusive, may be exercised to its utmost extent by the use of all means requisite to its complete exercise, and no state by virtue of its police power, or any other power it possesses, may restrict this grant or the plenary exercise of this power, for these inhere in the supreme law of the land and are paramount to the powers of the states.

4. Same—Rates in Interstate Commerce National and Free to the Extent Not Regulated by the Nation:

The fares and rates of transportation in interstate commerce are national in character, susceptible of uniform regulation, and so far as the nation has not regulated them are free from regulation by virtue of the commercial clause of the Constitution.

5. Constitution—Commercial Clause—Carriers—Rates—Limits of National and State Power of Regulation:

The nation may regulate interstate fares and rates and all interstate commerce.

To the extent necessary completely and effectually to protect the freedom of, and to regulate, interstate commerce, but no farther, it may by its Congress and its courts affect and regulate intrastate commerce.

To the extent that it does not substantially burden or regulate interstate commerce, a state may regulate intrastate commerce and the fares and rates therein within its borders, but no farther. It may enforce regulations of intrastate com-
511 merce and its fares and rates which only incidentally or remotely affect interstate commerce. But state laws, orders, and regulations concerning intrastate commerce, or the fares

or rates therein, which substantially burden or regulate interstate commerce, or the fares or rates therein, are beyond the powers of the state, unconstitutional, and void.

And where the attempted exercise of the power of a state to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinges upon or conflicts with the constitutional power of the nation to protect the freedom of, and to regulate, interstate commerce and the fares and rates therein, the latter must prevail, because "that which is not supreme must yield to that which is supreme."

6. Constitution—Commercial Clause—Carriers—Rates—Effect, Not Terms, of State Regulation, Test of Substantial Burden on Interstate Commerce:

The effect, and neither the terms nor the purpose, of state regulations, determines whether they substantially burden, or only incidentally or remotely affect, interstate commerce.

And this is a judicial question, which each court must decide on its own responsibility on the special facts of the case before it, and in the decision of which it "must obey the Constitution, rather than the lawmaking department of the government."

7. Carriers—Rates—Discriminating Differences Between State and Interstate Rates Forbidden by Interstate Commerce Act:

The nation has the power to forbid, and by the act to regulate commerce (Act Feb. 4, 1887, c. 104, 24 Stat. 379 [U. S. Comp. St. 1901, p. 3154]), it has prohibited, undue discriminations between localities in different states wrought by unreasonable differences between intrastate and legal interstate rates caused by the reduction of the former by the acts and orders of the officers of a state.

8. Constitution—Commercial Clause—Minnesota Intrastate Rates Impose Unconstitutional Burdens on Interstate Commerce:

The facts considered, and held:

The unavoidable effect of the general and sweeping reductions of intrastate fares and rates in Minnesota, made by the acts and orders considered, was and is substantially to burden, directly to regulate, and to discriminate against the interstate commerce of the defendant companies, and to create undue and unjust discriminations between localities in Minnesota and those in other states, in violation of the commercial clause of the Constitution.

9. Carriers—Confiscatory Rates—Just Compensation Entitles to a Fair Return upon value of Property Used:

The just compensation secured by the fourteenth amendment entitles the defendant railroad companies to a fair return upon the reasonable value of their property in Minnesota devoted to the public use of transportation. Such a return is just to the public as well as to the carriers.

10. Carriers—Confiscatory Rates—Value of Railroad Properties—Cost of Reproduction New:

Under the evidence in these cases the cost of reproduction

new of the Minnesota properties of the defendant companies devoted to the public use of transportation is more persuasive evidence of their values than the market value of their stocks and bonds, or the original cost of their acquisition and construction.

11. Carriers—Confiscatory Rates—Reasonableness—Presumption of Correctness of Master's Findings Superior to Presumption of Reasonableness:

Rate making looks to the future, and is a legislative function. Rate judging, determining whether or not rates made are confiscatory, is a judicial function.

There is a presumption in the first instance that Legislatures and commissions make reasonable and just rates, and clear proof is requisite to overcome it.

But when, after fares and rates have been tried by actual use for months, after plenary proof of their effect and other facts
512 determinative of the issue confiscation vel non, has been made before a master learned in the law, who finds the facts, the legal or judicial presumption that his findings are just and right, while not conclusive, is superior to the original presumption that the rates were just and reasonable.

12. Carriers—Confiscatory Rates—Valuation—Cost of Reproduction—Interest During Construction:

Interest on the cost of reproduction of railroad property at 4 per cent. per annum during one-half the time requisite to acquire and construct it is a necessary expense of reproduction and may be lawfully allowed as such.

13. Same—Apportionment of Value—Revenue Basis Most Equitable:

Apportionment on the basis of revenue is the most reasonable and equitable method of assigning the value of railroad property in a state used for transportation to the various classes of its business, in order to determine the reasonableness of fares and rates.

14. Carriers—Confiscatory Rates—Reasonableness—Fair Return in Minnesota 7 Per Cent. Per Annum on Value Used:

A net income of 7 per cent. per annum upon the value of railroad property in Minnesota devoted to the public use of transportation is not more than the fair return to which a railroad company is entitled under the fourteenth amendment to the Constitution.

In Equity.

Jared How, Charles W. Bunn, Hale Holden, and Pierce Butler (Robert Thorne and William D. Mitchell, on the briefs), for complainants.

Edward T. Young and Edmund S. Durment (George T. Simpson, on the briefs), for defendants.

SANBORN, *Circuit Judge:*

In the year 1906 the Northern Pacific Railway Company, the Great Northern Railway Company, and the Minneapolis & St. Louis Railroad Company were carrying passengers and freight within, through, and without the state of Minnesota for legal fares, rates, and charges which had been established, filed and published in accordance with the provisions of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887 (24 Stat. 381, c. 104 [U. S. Comp. St. 1901, p. 3157]), and its amendments (U. S. Comp. St. Supp. 1909, pp. 1135, 1138, 1139), and these fares, rates, and charges were equable, relatively fair, and not discriminatory between interstate transportation and transportation within the state of Minnesota.

On September 6, 1906, the Railway and Warehouse Commission of the state of Minnesota by order directed a reduction of the maximum rates for the transportation of general merchandise within that state 20 to 25 per cent. below the fares and rates which these companies were then using, and on May 3, 1907, by a supplemental order it so reduced their in-rates to distributing points in the state that the reductions amounted in the case of the Northern Pacific Company to 13.58 per cent. On April 4, 1907, the Legislature of the state passed an act whereby it reduced maximum passenger fares within that state 33⅓ per cent. below the fares the companies were then using, and on April 18, 1907, it passed an act which reduced maximum commodity rates within the state 7.377 per cent. below the rates thereon in use by the companies. The laws of Minnesota required the companies, their officers and agents, to put these reduc-
513 tions in effect under severe and unconstitutional penalties. Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932; Gen. Laws Minn. 1907, c. 97 (Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2); Gen. Laws 1907, c. 232 (Rev. Laws Supp. 1909, §§ 2007—11 to 2007—17); Rev. Laws Minn. 1905, § 1987. The companies made and have since maintained the prescribed reductions in the merchandise rates and the passenger fares, but at the suit of their stockholders this court temporarily enjoined them from reducing their commodity rates.

The complainants, stockholders respectively of these railroad companies, brought these suits against them and against the Attorney General and the members of the Railroad and Warehouse Commission of the state to prevent them from maintaining these fares and rates, on the grounds (1) that the orders of the Commission and the acts of the Legislature described substantially burdened and regulated interstate commerce on the railroads of these companies, and (2) that their necessary effect was the confiscation of property of the companies. The cases were referred to Hon. Charles E. Otis as special master to hear and report the evidence, to find the facts, and to recommend forms of decrees. He has made a clear, concise, and exhaustive finding of the facts, has returned all the evidence to the court, and has recommended decrees for the complainants on both of the grounds they presented. Exceptions to his report have been argued, and the cases are here for decrees. In the discussion of the

questions at issue the term "defendants" will be used to designate the Attorney General and the members of the Railroad and Warehouse Commission, because they alone actively assail the findings and recommendation of the master.

The first question for consideration is whether or not the orders of the Commission and the acts of the Legislature substantially burden interstate commerce, and the answer to this question must be drawn from an application of the facts which disclose their effect to the established rules of law which govern this subject.

These orders and acts by their terms relate to intrastate fares and rates only. Counsel for the defendants insist that in the police power of the state is vested plenary authority to make and enforce them because they relate to commerce within the state only, while the complainants argue that their enforcement is beyond the power of the state because the effect of their necessary operation is substantially to burden interstate commerce and hence to invade the exclusive domain of the nation, in violation of the commercial clause of the Constitution (article 1, § 8).

The principles and rules of law by which these orders and acts must be tried have been conclusively established by the decisions of the Supreme Court, and it will not be unprofitable to state them here again and to bear them constantly in mind during the consideration of the facts which must determine the issue here presented.

The power to regulate commerce among the states was carved out of the general sovereign power by the people when the national government was formed, and granted by the Constitution to the Congress of the nation. That grant is exclusive. The United States may exercise that power to its utmost extent, may use all means requisite to its complete exercise, and no state, by virtue of any power it
514 possesses, either under the name of the police power or under any other name, may lawfully restrict or infringe this grant, or the plenary exercise of this power; for these are paramount to all the powers of the state and inhere in the supreme law of the land. The fares and rates of transportation of passengers and freight in interstate commerce are national in their character and susceptible of regulation by uniform rules. The silence or inaction of Congress relative to such a subject is a conclusive indication that it intends that the interstate commerce therein shall be free, so far as the Congress has not directly regulated it. Welton v. State of Missouri, 91 U. S. 275, 282, 23 L. Ed. 347; Brown v. Houston, 114 U. S. 622, 631, 5 Sup. Ct. 1091, 29 L. Ed. 257; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 485, 507, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Walling v. Michigan, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691; Hall v. De Cuir, 95 U. S. 485, 490, 24 L. Ed. 547; Wabash, St. L. & P. R. Co. v. Illinois, 118 U. S. 557, 570, 573, 7 Sup. Ct. 4, 30 L. Ed. 244.

To the extent necessary completely and effectually to protect the freedom of and to regulate interstate commerce the nation by its Congress and its courts may affect and regulate intrastate commerce, but no farther.

To the extent that it does not substantially burden or regulate in-

interstate commerce a state may regulate the intrastate commerce within its borders, but no farther.

If the plenary power of the nation to protect the freedom of and to regulate interstate commerce and the attempted exercise by a state of its power to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinge or conflict, the former must prevail and the latter must give way, because the Constitution and the acts of Congress passed in pursuance thereof are the supreme law of the land, and "that which is not supreme must yield to that which is supreme." Brown v. Maryland, 12 Wheat. 419, 442, 6 L. Ed. 678; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Wabash, St. L. & P. Ry. Co. v. Illinois, 118 U. S. 557, 575, 7 Sup. Ct. 4, 30 L. Ed. 244; Covington, etc., Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962; Houston & T. C. R. Co. v. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 493, 50 L. Ed. 772; Cleveland, C., C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 517, 519, 521, 20 Sup. Ct. 722, 44 L. Ed. 868; Mississippi Railroad Commission v. Illinois Central R. Co., 203 U. S. 335, 343, 27 Sup. Ct. 90, 51 L. Ed. 209; Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 854, 35 L. Ed.

Thus a part of every interstate transportation is carried on within the state of its initiation and conclusion; within another state, 515 but neither state may fix or regulate the rates or rules of the part within its borders, because the authority over it is requisite to the complete preservation of the freedom of and to the untrammeled regulation of, that transportation, and this power is vested exclusively in the nation. Wabash, etc., R. R. Co. v. Illinois, 118 U. S. 557, 575, 7 Sup. Ct. 4, 30 L. Ed. 244.

The nation and many states provide that carriers may not charge a higher rate for a short haul than for a long haul of like articles in the same direction under similar circumstances. But where the long haul is interstate, although the short haul is entirely within a single state, such a state may not enforce such a law for the same reason. Louisville & Nashville R. Co. v. Eubank, 184 U. S. 27, 42, 43, 22 Sup. Ct. 277, 46 L. Ed. 416.

A state has the general power to prescribe the terms under which foreign corporations may carry on business within it, but any attempted exercise of that power by statute or otherwise in such a way as to prohibit or substantially to burden the interstate commerce of a foreign corporation within its borders is unconstitutional and void. Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 27, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Co.

pany v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. 1, 6-11, 12, 13, 84 C. C. A. 167, 172, 177.

Subject to the constitutional limitation, which has been stated, a state may enact and enforce laws prescribing reasonable fares and rates for and otherwise regulating its intrastate commerce, although the operation of such laws remotely or incidentally affects interstate commerce, such as statutes regulating elevator charges (Munn v. Illinois, 94 U. S. 113, 135, 24 L. Ed. 77; Budd v. New York, 143 U. S. 517, 545, 12 Sup. Ct. 468, 36 L. Ed. 247); requiring track connections at a junction (Wisconsin, etc., R. R. Co. v. Jacobson, 179 U. S. 287, 21 Sup. Ct., 115, 45 L. Ed. 194); prohibiting the operation of freight trains on Sunday, regulating the liability of the initial carrier beyond its line (Richmond, etc., R. R. Co. v. Patterson Tobacco Co., 169 U. S. 311, 18 Sup. Ct. 335, 42 L. Ed. 759); requiring the reasonable stopping of passenger trains at stations (Lake Shore & Michigan South. Ry. Co. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. Ed. 702; Gladson v. Minnesota, 166 U. S. 427, 431, 17 Sup. Ct. 627, 41 L. Ed. 1064); requiring telegraph companies to receive messages within a state and transmit them with reasonable diligence (Western Union Telegraph Co. v. James, 162 U. S. 650, 656, 16 Sup. Ct. 934, 40 L. Ed. 1105); excluding diseased cattle by means of a reasonable inspection law (Asbell v. State of Kansas, 209 U. S. 251, 256, 28 Sup. Ct. 485, 52 L. Ed. 778); requiring reasonable connections between trains of different companies (Atlantic Coast Line R. R. Co. v. North Carolina Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. Ed. 933); regulating reasonably the operation of passenger trains (Missouri Pacific Ry. Co. v. Kansas, 216 U. S. 262, 30 Sup. Ct. 330, 54 L. Ed. 472); requiring the transfer of cars to a mill near a crossing (Missouri Pacific Ry. Co. v. Larabee Mills Co.,
516 211 U. S. 612, 620, 622, 29 Sup. Ct., 214, 53 L. Ed. 352); prohibiting the possession of game (New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 40, 41, 29 Sup. Ct. 10, 53 L. Ed. 75); requiring locomotive engineers to be examined and licensed (Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. 564, 31 L. Ed. 508; Nashville, etc., Ry. Co. v. Alabama, 128 U. S. 96, 9 Sup. Ct. 28, 32 L. Ed. 352); requiring railway companies to fix their rates annually for the transportation of passengers and freights and to post a printed copy of such rates at their stations (Railroad Company v. Fuller, 17 Wall. 560, 21 L. Ed. 710); forbidding the consolidation of parallel or competing lines of railway (Louisville & Nashville R. R. Co. v. Kentucky, 161 U. S. 677, 16 Sup. Ct. 714, 40 L. Ed. 849); regulating the heating of passenger cars and directing guards and guard posts to be placed on railroad bridges and trestles and the approaches thereto (New York, N. H. & H. R. R. Co. v. New York, 165 U. S. 628, 17 Sup. Ct. 418, 41 L. Ed. 853); providing that no contract made within the state shall exempt any railroad corporation from the liability of a common carrier or a carrier of passengers which would have existed if no contract had been made (Chicago, Milwaukee & St. Paul Ry. Co. v. Solan, 169 U. S. 133, 18 Sup. Ct. 289, 42 L. Ed. 688); prescribing rates within the state on a single

article, coal (Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S. 257, 265, 22 Sup. Ct. 900, 46 L. Ed. 1151; Northern Pacific Ry. Co. v. North Dakota, 216 U. S. 579, 30 Sup. Ct. 423, 54 L. Ed. 624).

On the other hand, the laws of a state or the orders of its commissions relating to its intrastate commerce which by their necessary or natural or probable operation have the effect substantially to burden interstate commerce are beyond its powers, violative of the commercial clause of the Constitution, and void. Of this character are statutes imposing burdensome conditions on the landing of passengers from vessels employed in foreign commerce (Henderson v. Mayor of New York, etc., 92 U. S. 259, 268, 23 L. Ed. 543); requiring carriers engaged in interstate commerce to give all persons upon their public conveyances equal rights and privileges in all parts of those conveyances without discrimination or distinction on account of race or color (Hall v. De Cuir, 95 U. S. 485, 486, 488, 490, 24 L. Ed. 547); requiring telegraph companies to deliver dispatches by messenger to the persons to whom they are addressed so far as such a statute attempts to regulate the delivery of such dispatches at places in other states (Western Union Telegraph Co. v. Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187); prohibiting a higher rate for a short haul entirely within the state than that charged for a longer interstate haul (Wabash, etc., Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244); forbidding common carriers to bring intoxicating liquors into a state without a certificate that the consignee is authorized to sell such liquors in the county (Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700); prohibiting the sale in a state of fresh meats which have not been taken from animals inspected within the state within 24 hours before they are slaughtered (Minnesota v. Barber, 136 U. S. 313, 322, 329, 10 Sup. Ct. 862, 34 L. Ed. 455); prohibiting the sale of fresh meats from animals slaughtered 100 miles or more
517 from the place at which they are offered for sale, unless they have been previously inspected by local inspectors (Brimmer v. Rebman, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862); prescribing tolls for the use of a bridge across a river between two states (Covington Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962); requiring a railroad company engaged in interstate commerce to furnish an unreasonable number of cars to shippers in the state upon demand (Houston, etc., Ry. Co. vs. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772); requiring such a company to stop all its regular trains at county seats on its line (Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 517, 519, 20 Sup. Ct. 722, 44 L. Ed. 868); requiring such a company to stop its through fast trains at a specified station in the state (Atlantic Coast Line R. R. Co. v. Wharton, 207 U. S. 328, 334, 337, 28 Sup. Ct. 121, 52 L. Ed. 230); levying a tax "equal to 1 per cent. of its gross receipts" on each railroad lying wholly within the state (Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031); and requiring foreign corporations to pay large fees as a condition of carrying on business entirely intrastate within a state, although by the

orders of the charter board expressly leaving these corporations free to carry on interstate commerce in the state without any condition or restriction (Western Union Telegraph Co. vs. Kansas, 216 U. S. 1, 7, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 163, 30 Sup. Ct. 280, 54 L. Ed. 423).

The acts of the Legislature of Minnesota and the orders of its commission are so general and so far reaching in their effect that there is no doubt that they unavoidably affect the interstate commerce of the companies. In the light of the rules and decisions reviewed, the question here at issue therefore becomes: Do these statutes and orders substantially burden or only incidentally or remotely affect the interstate commerce of the companies? This question, however, may not be answered by the words or terms of the laws and orders, or by a consideration of the intent or purpose of their makers alone. The touchstone to the true answer to the question and the test of the validity of the orders and statutes is their effect upon interstate commerce.

It is the effect, and not the terms or purpose, of state regulations of its local commerce, that determines whether or not they so substantially burden interstate commerce that they violate the commercial clause of the Constitution. And this is a judicial question which each court must determine on its own responsibility on the special facts of each particular case, and in the determination and decision of which it "must obey the Constitution rather than the law-making department of the government." Mugler v. Kansas, 123 U. S. 623, 661, 8 Sup. Ct. 273, 31 L. Ed. 205; Henderson v. Mayor of New York, 92 U. S. 259, 268, 23 L. Ed. 543; Minnesota v. Barber, 136 U. S. 313, 319, 330, 10 Sup. Ct. 862, 34 L. Ed. 455; Brimmer v. Rebman, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862; Cleveland, etc., Ry. Co. v. Illinois, 177 U. S. 514, 522, 20 Sup. 518 Ct. 722, 44 L. Ed. 868; Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27, 43, 22 Sup. Ct. 277, 46 L. Ed. 416; Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 30, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423.

The counter proposition again presented in this case, that it is only where orders and statutes by their terms or by their construction by state courts substantially or directly regulate interstate commerce, or where by their terms they disclose an intent of their makers so to do that they may be adjudged violative of the commercial clause, has been repeatedly urged upon the consideration of the Supreme Court in the cases just cited, and in many others only to be conclusively denied. In Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031, a case which involved a statute levying a tax upon a road entirely within the state which the court held to be a substantial burden upon interstate commerce and void, it said:

"Neither the state courts, nor the Legislatures, by giving the tax a particular name, or by the use of some form of words, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form."

Only last year in the Kansas cases (216 U. S. 1, 56, 30 Sup. Ct. 190, 54 L. Ed. 355), the Supreme Court again repudiated this contention. In those cases a statute of Kansas required of foreign corporations certain fees as a condition of permitting them to conduct intrastate business in that state. The Western Union Telegraph Company, which was carrying on both intrastate and interstate business in Kansas, applied for permission to continue its intrastate business, and the charter board of the state ordered that its application be granted only on condition that it pay the fee prescribed by the statute, and "that nothing herein contained shall apply to nor be construed as restricting in any wise the transaction by the said applicant of its interstate business, nor its business for the federal government, but that this grant of authority and requirement as to payment relates only to the business transacted wholly within the state of Kansas." The officers of the state insisted that this statute and this order were valid because by their express terms they excluded interstate business, applied to intrastate business alone, and disclosed a clear purpose and intent of the Legislature and the board not to obstruct or embarrass interstate commerce in any way. But the Supreme Court reviewed several of its earlier decisions upon this subject, held the statute and the order unconstitutional, and, among other things, said:

"But the disavowal by the state of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such
519 matters the judiciary will not regard mere forms, but will look through forms to the substance of things." 216 U. S. 1, 27, 30 Sup. Ct. 190, 197, 54 L. Ed. 355.

And Mr. Justice White in the Pullman Company's Case, 216 U. S., at page 65, 30 Sup. Ct., at page 236 (54 L. Ed. 378), which involved the same statute, said that one of the propositions conclusively established by previous decisions of the court was that:

"Even though a power exerted by a state, when inherently considered, may not in and of itself abstractly impose a direct burden on interstate commerce, nevertheless such exertion will be a direct burden on such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on."

And Mr. Justice Harlan in Ludwig v. Western Union Telegraph

Co., 216 U. S., at page 162, 30 Sup. Ct., at page 285 (54 L. Ed. 423), discussing a similar statute of Arkansas, said:

"According to well-settled rules of statutory construction, the validity of a statute, whatever its language, must be determined by its effect or operation, as manifested by the natural and reasonable meaning of the words employed. Henderson v. Mayor of New York, 92 U. S. 259, 268 [23 L. Ed. 543]. If a statute by its necessary operation really and substantially burdens the interstate business of a foreign corporation seeking to do business in a state, or imposes a tax on its property outside of such state, then it is unconstitutional and void, although the state Legislature may not have intended to enact an invalid statute."

Here, then, is the decisive question upon this branch of these cases. Is the effect of the statutes and orders assailed substantially to burden the interstate commerce of the companies? And we turn to the facts of this case for the answer.

The Northern Pacific Railway Company is a corporation and a common carrier that on June 30, 1906, owned and was operating 7,694 miles of railroad track, of which 1,625 miles are in the state of Minnesota. Its main line extends from Superior, Wis., and Duluth, Minn., which sit side by side at the westerly end of Lake Superior, St. Paul, and Minneapolis, Minn., westerly through North Dakota, Montana, Idaho, Washington, and Oregon, to Seattle, Tacoma, and Portland on the Pacific Coast. From Duluth to other points in Minnesota reached by it the company has an interstate line passing through Wisconsin and a local line that joins the interstate line at Carlton, 20 miles westerly from Duluth. Its main line crosses the western line of Minnesota at Moorhead, Minn., and Fargo, N. D., 250 miles from St. Paul. It has two branch lines, which cross the western line of the state at East Grand Forks, Minn., and Grand Forks, N. D., 320 miles from St. Paul, and at Breckenridge, Minn., and Wahpeton, N. D., 237 miles from St. Paul, respectively.

The Great Northern Railway Company is a corporation and a common carrier that owned and was operating lines of railway comprehending on June 30, 1906, 8,528 miles of track, of which 2,779 miles are in Minnesota. Its main lines extend from Superior, Wis., and Duluth, Minn., in a westerly direction through the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, to the cities of Seattle and Portland. Its line
520 between Duluth, Minn., and other points in Minnesota, reached by it, passes through the state of Wisconsin. It has five lines of railway which cross the western line of Minnesota and extend westerly into or through other states, one from Minneapolis by way of Willmar, which crosses at Breckenridge, Minn., and Wahpeton, N. D., 214 miles from St. Paul; one from Minneapolis by way of Barnesville, which crosses at Moorhead, Minn., and Fargo, N. D., 241 miles from St. Paul; one from Duluth by way of Crookston, which crosses at East Grand Forks, Minn., and Grand Forks, N. D., 296 miles from Duluth; one which leaves the Willmar main line at Benson and crosses the Minnesota line at Nassau, 173 miles from St. Paul; one which leaves the main line at Willmar and crosses the Minnesota line at Jasper, Minn., 218 miles from St. Paul; and it

also has a branch line wholly within the state of Minnesota, which leaves the main line at Barnesville and extends northerly to Noyes, 391 miles from St. Paul.

The Minneapolis & St. Louis Railroad Company is a corporation and a common carrier that owned and operated lines of railroad comprehending on the 30th day of June, 1906, 632 miles of track, and that operated by means of leases or trackage rights 396 miles of track. Its main line extends from St. Paul and Minneapolis, Minn., westerly by way of Winthrop, Minn., to Lebeau, S. D., from St. Paul and Minneapolis, southwesterly by way of Winthrop, Minn., to Storm Lake, Iowa, and from St. Paul and Minneapolis, southerly by way of Albert Lea, Minn., to Des Moines, Iowa.

The whole railroad properties of each of these companies has constituted and still constitutes a single system, and has been and is operated by each of said companies as such. The cars, engines, and supplies of each company customarily have been and are used upon its system without regard to whether the business in which they have been or are employed has been or is interstate business or business local to a state. Each of said companies customarily has carried and does carry interstate passengers and passengers local to the state on the same train and in the same car, and interstate freight and freight local to a state on the same train, and if less than car load freight in the same car. There has never been any separation, and it is impracticable in the exercise of any fair economy to make and maintain any separation in the business of transporting interstate passengers and passengers local to the state, or between interstate freight and freight local to a state.

By far the larger proportion of the business of each of these companies is interstate, and by far the larger proportion of the business of each of these companies within the state of Minnesota is interstate. In the year 1906 the freight business of the Northern Pacific Company local to Minnesota was 2.67 per cent. of its entire freight business and 12.33 per cent. of its freight business touching the state and its passenger business local to the state was 5.79 per cent. of its entire passenger business and 67.21 per cent. of its passenger business touching the state.

The conditions attending the transportation of passengers and of freight have been and are substantially the same for like distances within those portions of the states of Wisconsin, Minnesota,
521 North Dakota, and South Dakota reached by the lines of railway operated by either of these companies, whether such transportation has been or is a business local to a state or interstate between any or all of these states.

Prior to the orders and acts here in question the fares and rates in force upon these lines of railway for the transportation of passengers and freight were lawful, for they had been adopted in accordance with the provisions of the act of Congress, were relatively fair, and were not discriminatory between interstate business and business local to any state.

Any substantial change in the basis of rates thus established and in force, or in any particular rate, due only to the fact that the transportation was interstate, or that it was local to a state, would have been

actual, undue, and unjust discrimination in fact and any substantial difference in rates for the transportation of passengers, merchandise, or commodities maintained by either of said companies as between traffic local to the state and traffic which goes between the state of Minnesota and either of its neighboring states will constitute actual, undue, and unjust discrimination in fact.

Substantially all commodities and property which are the subject of transportation are classified and arranged in 10 groups with reference to their general character and value, and the cost of transportation thereof and this classification with modifications from time to time made therein has long been used by carriers in the West and Northwest as a basis for fixing rates. Commodities of each class take the same rate under like conditions, and this classification is called the "Western classification." In Minnesota, however, many commodities amounting to several hundred have by the action of the Minnesota Commission been removed from this Western classification, and given special rates, which are called "commodity rates," or have been reduced in class, so that the Western classification in Minnesota is in many respects different from the Western classification in general use. The Commission by its order made on September 6, 1906, prescribed a schedule of maximum rates for the transportation within the state of Minnesota of articles covered by this Western classification as modified by the intervention of the Commission, and required the railway companies to observe these rates. This schedule was such that each rate for each class for any distance bore such an exact relation to each other rate that, given one rate out of the schedule, any other rate could be ascertained by mathematical calculation, and without reference to the schedule itself. This is the plan of the schedule.

For first-class merchandise an allowance of 11.2 cents per cwt. is made for terminal charges, and for each five miles or fraction thereof up to 200 miles .98 of a cent for hauling charge, so that for a distance of five miles the rate is 12 cents per cwt., for a distance of 10 miles the rate is 12.98 cents per cwt., and for a distance of 200 miles the rate is 50.22 cents per cwt. After a distance of 200 miles is reached, .98 of a cent is allowed per cwt. as a hauling charge for each 10 miles or fraction thereof up to 400 miles, so that, the rate for 200 miles being 50.22 cents per cwt., the rate for 210 miles is 51.20 cents, for 220 miles the rate is 52.18 cents, and for 400 miles the
522 rate is 69.82 cents per cwt. After a distance of 400 miles is reached, .98 of a cent is allowed as a hauling charge per cwt. for each 20 miles or fraction thereof up to 500 miles; so that, the rate for 400 miles being 69.82 cents per cwt., the rate for 420 miles is 70.80 cents, and the rate for 500 miles is 74.72 cents per cwt. There are 10 classes of merchandise provided for in this schedule. The rates for classes other than the first class are a fixed per centum of the corresponding rates for the first class, those for the second class being 83 1/3 per cent., for the third class being 66 2/3 per cent., for the fourth class being 50 per cent., for the fifth class being 40 per cent., for class A being 45 per cent., for class B being 35 per cent., for class C being 30 per cent., for class D being 25 per cent., and for class E being 20 per cent. The rates thus prescribed are

maximum terminal rates, and may be increased by 5 per centum for shipments between stations, neither of which is a terminal or a distributing station. The reduction in merchandise rates made by this order of September 6, 1906, was from 20 per cent. to 25 per cent. of the rates theretofore in force. Notwithstanding the extent of this reduction, all the railway companies interested put the rates prescribed by this order into effect on November 15, 1906, and they have ever since been, and still are, maintained by all the companies concerned as maximum rates for the transportation within the state of merchandise covered by the order.

On May 3, 1907, the Commission made an order supplemental to that of September 6, 1906, for the purpose of securing more favorable in-rates to a number of jobbing centers in the state of Minnesota other than St. Paul, Minneapolis, and Duluth. This order had the effect to substantially reduce the previously existing rates to the extent in the case of the Northern Pacific Company of 13.577 per cent. Nevertheless, the railroad companies put in force and have since maintained the rates prescribed by this supplemental order.

The rates prescribed for the articles specified in this Western classification as modified are called "merchandise rates."

By chapter 232 of the Laws of Minnesota 1907, approved April 18, 1907, the Legislature of Minnesota created seven new classes of commodities numbered 11 to 17. Wheat and 13 other articles were placed in class 11, corn and 37 other articles in class 12, lumber and 5 other articles in class 13, sheep in double-decked cars and cattle in class 14, sheep in single-decked cars and hogs in class 15, hard coal in class 16, and soft coal in class 17; and it prescribed and required the companies to observe maximum rates for the transportation of these articles in Minnesota which were on the average 7.37 per cent. below those then lawfully in force, and the rates on grain and coal that were then in force on the Northern Pacific and Great Northern lines had been reduced by those companies in the preceding September and October about 10 per cent. These rates are called "commodity rates" and the companies, in view of the severe penalties denounced for a failure to comply with the act, were about to put them in force when they were enjoined at the suit of the complainants.

By chapter 97 of the Laws of Minnesota 1907, the Legislature prescribed and required the companies to observe maximum rates of 2 cents a mile for passengers over, and 1 cent a mile for pas-
523 sengers under, 12 years of age for the transportation of such passengers within the state of Minnesota. This law required a reduction of 33⅓ per cent. of the then established lawful rates, and the companies, in view of the severe penalties prescribed for a violation of this law, put these rates in force and have since maintained them.

The average reduction of fares and rates required by these orders and acts were:

(1) On general merchandise 20 per cent. to 25 per cent. by the order of September 6, 1906.

(2) In in-rates to distributing stations amounting in the Northern Pacific case to 13.58 per cent.

(3) In maximum rates on grain, lumber, live stock, coal, etc., 7.377 per cent.

(4) In maximum rates on passengers 33⅓ per cent.

Superior, Wis., and Duluth, Minn., are situated side by side at the western extremity of Lake Superior. Each is an important business center. Conditions attending transportation to and from either of them are the same as to or from the other. The railroad companies reaching them have always accorded them and do accord them like rates in and out. They ship and receive the same kinds of freight and to and from the same localities. Any substantial difference in the rates accorded them would destroy the commerce of the city given the higher rates. The propriety of a parity of rates to and from these localities has always been recognized.

For the same reasons, each of the couples of cities composed of Grand Forks, N. D., and East Grand Forks, Minn., Fargo, N. D., and Moorhead, Minn., and Wahpeton, N. D., and Breckenridge, Minn., have always been accorded by the railway companies serving them like rates in and out. The cities in each pair depend upon the same carriers, have substantially the same producing and consuming markets, and receive and ship the same kinds of articles. Any substantial difference in rates as between the cities composing each pair would seriously damage, if not wholly destroy, the commerce of the city given the higher rate, and would be an undue and unjust preference and advantage in fact for its neighboring city.

Failure by the Northern Pacific Company to maintain substantially as low rates between Superior and points in Minnesota as between Duluth and other points in Minnesota would seriously impair the power of the company to transact its interstate business between Superior and points in Minnesota, and would seriously depreciate the value of the company's property in Superior.

Merchandise Rates.

The schedule comprehended within the order of September 6, 1906, prescribed maximum rates for transportation within the state of Minnesota which were from 20 per cent. to 25 per cent. lower than those theretofore established by the Northern Pacific and Great Northern Companies and maintained by them up to the time of the taking effect of the order for transportation in Wisconsin, Minnesota, and North Dakota, regardless of whether such transportation was local to either state or interstate between any two of them. If
524 these companies after the installation of the rates prescribed by the order for transportation within Minnesota had continued to maintain the former rates for transportation between Minnesota and an adjoining state, the result would have been serious discrimination against localities in the neighboring states.

For example, prior to the taking effect of the order, the rate maintained by the Northern Pacific on a 200-pound barrel of flour (fourth class) from Minneapolis to Fargo was 68 cents. The schedule fixed 54.2 cents as a maximum from Minneapolis to Moorhead. This is a fair example of the difference between the former interstate rates for

transportation between Minnesota and an adjoining state and the rates prescribed by the order for transportation within the state.

On the same day that the Northern Pacific Company installed its rates in Minnesota as prescribed by the order, it reduced its interstate rates between Superior and points in Minnesota to an exact parity with its rates between Duluth and other points in Minnesota, its interstate rates between Grand Forks, Fargo, and Wahpeton, N. D., and Minnesota points to an exact parity with its rates between East Grand Forks, Moorhead, and Breckenridge, respectively, and other Minnesota points and its interstate rates between Superior and Grand Forks, Fargo, and Wahpeton, respectively, to an exact parity with its state rates between Duluth and East Grand Forks, Moorhead, and Breckenridge, respectively. The reduction was substantial. For example, the reduction in the rate on first class from Superior to Fargo was from 65 cents per cwt. to 54.1 cents per cwt., and on fifth class from 27 cents per cwt. to 21.7 per cwt.

These reductions were compelled by the necessary and direct effect of the operation of the order. Had they not been made, Superior could not have competed in business in Minnesota with Duluth, Fargo, Grand Forks, and Wahpeton could not have competed with Moorhead, East Grand Forks, and Breckenridge, respectively, nor could Superior have transacted business successfully with Fargo, Grand Forks, or Wahpeton. Moreover, although the Northern Pacific suffered a substantial loss in revenue from its interstate business, it had the choice of submitting to that loss or of suffering substantial destruction of its interstate commerce in articles covered by the order between these localities.

On the same day that the Northern Pacific made these reductions in its interstate rates the Great Northern made similar reductions, although its business between Duluth and Minnesota points is interstate. The reason for its reductions from Duluth was to preserve the relation in rates from Duluth which had always existed between localities on the Great Northern and localities similarly circumstanced on the Northern Pacific, and also to meet the reduced rates on the Northern Pacific line.

Moorhead, Minn., Fargo and Bismarck, N. D., Billings and Butte, Mont., are so-called "jobbing centers." Prior to the taking effect of the order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of car load rates from St. Paul, Minneapolis, and Duluth to these centers
525 and the less than car load rates out from these centers to the territory geographically tributary to them, respectively, had been such as to compare favorably with rates in and out of their local competitors as well as with less than car load rates from St. Paul, Minneapolis, and Duluth into the territory geographically served by them, respectively. The order of September 6, 1906, as supplemented by the order of May 3, 1907, substantially reduced car load rates from Duluth, St. Paul, and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage

in territory accessible to its jobbing industry, not only as against Fargo unless car load rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul, and Minneapolis unless less than car load rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction, unless accompanied by a corresponding reduction in car load rates to Fargo from the eastern terminals, would have served to build up Moorhead at the expense of Fargo, and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of car load rates into Moorhead and less than car load distributing rates out on the one hand, and less than car load distributing rates from Duluth, St. Paul, and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in car load rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and them, unless car load rates from the eastern terminals to Bismarck and less than car load rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on car load lots from the eastern terminals to Bismarck should be correspondingly reduced. And so on, from distributing point to distributing point.

Every rate comprehends two terminal charges, the initial and the final, and a distance haulage charge. It is a cardinal principle of rate making that a rate for a longer distance should be proportionately smaller than one for a shorter distance; that is to say, that a rate for 500 miles should be less than twice the rate for 250 miles, if conditions of transportation be the same, because the rate for 250 miles includes two terminal charges, and, if the rate for 500 miles were twice the rate for 250 miles, it would manifestly include the equivalent of four terminal charges. Even if the haulage charge were the same per mile for a haul of 500 miles as for a haul of 250 miles, which is contrary to the rule generally applied in rate making, the rate per ton per mile for the 500 miles should be less than for the 250 miles because in the one case the terminal charges would be spread over 500 miles and in the other over only 250 miles.

Comparison of rates at present maintained by the Northern Pacific Company from St. Paul to various stations in North Dakota and Montana with those established by the order of September 6, 1906, and now maintained by the company between St. Paul and Moorhead, discloses that the Commission made rates from St. Paul to Moorhead are in general substantially less than the proportion of the presently maintained interstate rates of the company to these various points in North Dakota and Montana, based on the mileage in Minnesota as compared to that of the entire haul. For example, the present rate maintained by the Northern Pacific on class E, merchandise from St. Paul to Miles City, 743 miles

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from St. Paul, is 39 cents per cwt. The rate to Moorhead, based on the proportion of 39 cents, which the mileage of the haul in Minnesota is of the entire haul, is 13 cents. The order allows only 11 cents per cwt. from St. Paul to Moorhead, in which, of course, are included two full terminal charges. Maintaining rates comparison of which shows this result involves substantial, undue, and unjust discrimination in fact against the interstate localities. And a reduction of the interstate rates compelled by the reduction of the state rates substantially burdens interstate commerce and restricts its freedom.

After the installation by the Great Northern and the Northern Pacific companies of the rates prescribed by the order of September 6, 1906, it appeared that the sum of the locals from St. Paul to Moorhead and from Moorhead to many points in North Dakota was less than the theretofore established and maintained interstate rates from St. Paul to these points in North Dakota. Both companies thereupon established and now maintain rates from St. Paul to these North Dakota points as a rule no greater than the sum of the locals on Moorhead, but which are substantially lower in general than the interstate rates maintained by them at the time of the taking effect of the order. Maintaining interstate rates from St. Paul to North Dakota localities substantially greater than the sum of the locals based on the state line would have involved undue and unjust discrimination in fact.

As a matter of fact, the reasons for such reduction were to prevent transshipment at Moorhead in order to take advantage of the lower sum of the locals; to retain on its line traffic which was liable to reach Moorhead over other lines by reason of competition; and, as to less than car load lots, to enable jobbers in the Twin Cities and Duluth to compete with Moorhead and Fargo in territory which otherwise the latter would have exclusively occupied by reason of their closer proximity thereto.

It is one of the fundamental dogmas of rate making that the haulage charge per mile shall not increase with increasing distance, if conditions be the same. The order of September 6, 1906, promulgates a schedule which for first-class merchandise, for example, allows a terminal charge of 11.02 cents per cwt. and a haulage charge of .98 cent per 5 miles up to 200 miles, then a haulage charge of .98 cent per 10 miles for added distance up to 400 miles, and then a haulage charge of .98 cent per 20 miles up to 500 miles—the limit of distance covered by the order. Both the terminal charge and the haulage charge allowed for the other merchandise classes are a fixed percentage of those allowed for first. Under this schedule, a hundred pounds of merchandise transported by the Northern Pacific from St. Paul to Moorhead, 248 miles, has been hauled for 48 miles, at the rate of .98 cent per 10 miles when Moorhead is reached. If
527 this same haulage charge of .98 cent per 10 miles be applied for the remaining distance of the haul from St. Paul to Spokane, Wash., 1,510 miles from St. Paul (which is taken as a fair example merely for the illustration of this principle), it would produce a rate from St. Paul to Spokane on first-class merchandise of $1.79 per cwt. The Interstate Commerce Commission in the

Spokane Rate Case has fixed the reasonable rate on first-class merchandise from St. Paul to Spokane of $2.50. Maintaining this rate from St. Paul to Spokane and the Commission's schedule in Minnesota at the same time necessarily involves the raising of the per mile haulage charge after the Minnesota state line has been crossed, or the charging a higher rate within Minnesota for its mileage proportion of long haul interstate business than for business local to the state carried on over the same rails and under the same conditions, and involves necessarily undue and unjust discrimination in fact against localities westerly of the Minnesota-North Dakota boundary line.

For more than 25 years the Northern Pacific Company has maintained an equal basis of rates on merchandise between its eastern terminals and Butte and its western terminals and Butte, and between its eastern terminals and localities intermediate between them and Butte, and between its western terminals and localities intermediate between them and Butte. Other railroads reaching Butte have during the same time maintained like rates to Butte from Sioux City, Omaha, St. Joseph, and Kansas City on the east, and from San Francisco, Sacramento, and Los Angeles on the west. Butte has been as the hub of a wheel, with spokes representing equal rates to these various cities. Industries have been born and have grown in reliance upon this parity of rates. Intermediate points have had rates fixed in proportion with the Butte rates. Competition of markets and of carriers has brought this about. The Northern Pacific Company cannot maintain its present Commission made rates between its eastern terminals and Moorhead, and at the same time its present interstate rates from its eastern terminals to Butte without substantial discrimination in fact against Butte or localities intermediate between its eastern terminals and Butte. If it lowers its rates from its eastern terminals to Butte and intermediate stations to such an extent as to obviate substantial discrimination in fact, it must, to preserve the relation which has always existed, lower to a like extent its rates from its western terminals to Butte and intermediate stations. If, then, the Northern Pacific maintains the Commission made rates between its eastern terminals and Moorhead, it must either substantially discriminate in fact or destroy the general relation of rates which has existed for many years in the territory between the Missouri river and the Pacific Coast. In this way the reduction of the rates in Minnesota either imposes a substantial burden upon, and a regulation of, interstate commerce or compels unjust discrimination therein.

Prior to the taking effect of the order of September 6, 1906, the Great Northern and Northern Pacific Companies had established joint through rates in connection with other carriers from all localities easterly or southerly of the state of Minnesota to all points in Minnesota westerly of St. Paul and Minneapolis reached by them, respectively, and these rates were in force at the time of the
528 taking effect of the order. After the rates prescribed by the order were installed, the sum of the locals on St. Paul from all localities southerly and easterly of Minnesota to all localities in

Minnesota westerly of St. Paul and Minneapolis resulting to these companies was substantially less than the then existing interstate rates between such localities southerly or easterly of Minnesota and such Minnesota localities. Maintaining such a relation of rates would have involved undue and unjust discrimination against the localities easterly and southerly of Minnesota and an unjust and undue preference and advantage in fact for St. Paul, because merchandise could have been shipped from all localities easterly and southerly of Minnesota to St. Paul on the then existing established and then existing interstate rates and distributed from St. Paul to all points westerly of St. Paul and Minneapolis on the rate prescribed by the order for substantially less charges in the aggregate than would have been incurred for the through haul under the then existing through interstate rates. In order to avoid the discrimination, the companies forthwith, after the taking effect of the order, withdrew the then existing interstate rates, and established a new tariff of through rates which were no higher than the sum of the locals on St. Paul. For example, the former through rate from Chicago to Wadena, Minn., on first-class merchandise, was $1.04 per cwt. The sum of the locals on St. Paul after the taking effect of the order was $1.004. The present through rate is $1.04, being a reduction of 8.6 cents per cwt. In other words, the reduction in the Minnesota rates compelled an unjust discrimination in interstate rates, or submission to the imposition of a substantial burden on interstate commerce.

Conditions attending transportation are substantially the same in Minnesota and North Dakota, whether the transportation is had to either state or interstate between them. If unjust and undue preference or advantage in rates is to be avoided, like rates must exist for like distances under like circumstances. The Northern Pacific and Great Northern Companies have prior to the taking effect of the order maintained an equable basis of rates in the territory which these two states compose without regard to state lines. For example, the interstate rates from Moorhead, Minn., westerly into North Dakota, have been the same as from Moorhead easterly into Minnesota, and no conditions have existed, or do exist, which justify a different basis of rates for east-bound to that for west-bound transportation.

Prior to the installation of the rates prescribed by the order, the rate per cwt. of first-class merchandise for 100 miles, for example, out of Moorhead, whether westerly, into North Dakota, or easterly, into Minnesota, was 43 cents. For transportation westwardly into North Dakota this rate from Moorhead still exists. The rate prescribed by the order and now in effect from Moorhead eastwardly into Minnesota is per cwt. of first-class merchandise 70½ cents. This disparity of rates for transportation under substantially similar conditions, and which disparity increases as distance easterly from Moorhead increases, constitutes an undue preference and advantage to the eastwardly localities in Minnesota, and a corresponding prejudice and disadvantage to the interstate westwardly localities in North

Dakota. If the companies maintaining this relation of rates,
529 unfair in fact, are to continue to maintain the rates prescribed by the order, they can remove the existing undue and unjust discrimination in fact against the interstate localities in North Dakota only by reducing the interstate rates from Moorhead to localities in North Dakota to a substantial parity with those maintained from Moorhead to localities at like distance in Minnesota.

The Great Northern Company owns and operates a branch line to Noyes, 391 miles from St. Paul. The line between St. Paul and Noyes is wholly within the state of Minnesota. Conditions attending transportation of merchandise from St. Paul to Noyes are at least no more favorable than those attending transportation from St. Paul to localities in North Dakota on the main line of the company and equally distant from St. Paul. All that is claimed by complainants is that conditions are substantially alike. Prior to the taking effect of the order, the rate per cwt. of first-class merchandise for transportation on the Great Northern from St. Paul to a locality 390 miles distant and situate either in Minnesota or in North Dakota was 96 cents. The Commission made rate from St. Paul to Noyes is 68.8 cents. Such a disparity in rates without substantial dissimilarity in conditions constitutes undue and unjust discrimination in fact.

The order of September 6, 1906, prescribes a basis of rate making. Its schedule is framed to secure a fixed relation between rates on the same class for different distances, a fixed relation between rates for the different classes for the same distance, and therefore manifestly a fixed relation between rates for different classes for different distances. These relations are so stable that, given the rate for any distance on any class, the rate for any other distance on any other class may be determined by one who knows the method upon which the schedule is constructed. An avowed purpose of the schedule is to secure equality of rates.

The Great Northern Company operates a line from St. Paul to Sioux City, Iowa, 327 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 218 miles from St. Paul—the distance from St. Paul to Jasper, the border Minnesota town.

It operates another line from St. Paul to Huron, S. D., 294 miles from St. Paul, which leaves the state of Minnesota and enters the state of South Dakota at a distance approximately 173 miles from St. Paul—the distance from St. Paul to Nassau, the border Minnesota town. Between St. Paul and Willmar, Minn., 102 miles from St. Paul, these lines are identical.

Under the schedule prescribed in the order, the progression of the rate—the haulage charge with increasing distance—breaks in two at a distance of 200 miles. That is to say, the haulage charge for first class (and for other classes in fixed relation) having been allowed at .98 cent for each five miles up to 200 miles is cut to .98 cent for each 10 miles beyond 200 miles, and up to 400 miles.

When the line between Minnesota and South Dakota is reached on the St. Paul-Sioux City line, the progression of the rate prescribed by the schedule is .98 cent per 10 miles for first class.

When the line between Minnesota and South Dakota is
530 reached on the St. Paul-Huron line, the progression of the rate is .98 cent per five miles of haul.

It is apparent that, unless undue and unust discrimination shall exist in the rates on one of these interstate lines as compared with the other, the same basis of making the rate, the same relation between rates for different distances and different classes must be maintained on one line as on the other, and that, notwithstanding that the 200-mile point of distance on the St. Paul-Huron line is within the state of South Dakota, the progression of the rate should break in two as it has on the St. Paul-Sioux City line on which that point was reached, and that break was made within the state of Minnesota.

The schedule prescribes fixed relations between rates for different distances and different classes. If the relation must be adhered to within the state of Minnesota, it cannot be departed from substantially merely because of the intervention of a state line at one distance or another without involving undue and unjust discrimination in fact in rates.

Since the taking effect of the order of September 6, 1906, both the Great Northern and the Northern Pacific Companies have reduced their interstate rates on merchandise from their eastern terminals in Wisconsin and Minnesota to all localities in general in North Dakota. Such reductions have been made as a rule only to such extent as was necessary to remedy the discrimination resulting from the fact that the sum of the local rates from the eastern terminals to the border towns of Minnesota and from such border towns to the several localities in North Dakota was less than the theretofore established and then existing through interstate rates from the eastern terminals to the several respective localities in North Dakota, and not to such extent as to remedy the discrimination resulting from the fact that in most cases the general basis of rates on merchandise for traffic within Minnesota is substantially lower than that maintained in North Dakota or for traffic crossing the line between North Dakota and Minnesota notwithstanding the substantial equality of conditions. Such substantially lower basis of rates for transportation of merchandise within Minnesota than for that within North Dakota or for that between the two states still exists, and constitutes undue and unjust discrimination in fact.

St. Cloud, Minn., is on the Barnesville main line of the Great Northern, and is 168 miles easterly from Moorhead, at which point this line leaves the state of Minnesota and enters the state of North Dakota. Fergus Falls, Minn., is on the same line, 56 miles easterly from Moorhead. They are each distributing centers, so declared by the Commission's order of May 3, 1907. Whether discrimination, in fact, exists between rates is determined by comparison of the rates involved. If conditions are substantially the same, rates for like distances should be the same, and, if not the same, undue and unjust discrimination in fact will exist. Conditions are substantially alike so far as transportation goes for a distance on the Great Northern of 168 miles westerly of Fergus Falls as for the same distance westerly of St. Cloud. Because they are distributing centers, rates from Fergus Falls

to points within that distance westerly should be the same as
531 from St. Cloud to points of equal distance westerly. Rates on articles covered by the order of September 6, 1906, from St. Cloud westerly within such distance of 168 miles, are substantially lower than those maintained by the Great Northern to points in North Dakota of like distance westerly of Fergus Falls. Such disparity depends only on the fact that in the case of the higher rates the state boundary line is crossed and on no other condition whatsoever; and it constitutes undue and unjust discrimination in fact, not only against the shipper at Fergus Falls, but, as well, against the consumer in the North Dakota towns in question.

Commodity Rates.

The main lines and branches of the Northern Pacific and Great Northern Companies within the states of Minnesota and North Dakota lie wholly (excepting certain limited tracts in which grain cannot be grown, such as the Bad Lands of North Dakota) within grain fields, and grain is shipped in substantial quantities from nearly all stations in these fields to Duluth, Minneapolis, and Superior.

Shipments of coal originate at the head of the Lakes—that is to say, Duluth, Minn., or Superior, Wis.—and find their destination at all localities served by the companies or either of them in Minnesota and eastern North Dakota.

Shipments of lumber originate at Duluth, Cloquet, Little Falls, and other points in Minnesota, and are destined to points throughout Minnesota and North Dakota.

Shipments of live stock originate in Minnesota, North Dakota, and eastern Montana, and go to South St. Paul or Chicago.

Conditions attending transportation are substantially the same as to all these commodities moving eastwardly, whether the shipment originates in Montana, North Dakota, or Minnesota, or whether it finds its termination at one of the Minnesota terminals of the companies, or at Superior, Wis.

Conditions attending transportation are substantially the same as to all these commodities moving westwardly, whether the shipment originates at a Minnesota point or at Superior, Wis., or whether it finds its destination in Minnesota or North Dakota.

Because conditions attending transportation are substantially the same, any difference in the basis of rates charged for transportation of coal, whether the shipment originates at Duluth, Minn., or at Superior, Wis., and is destined to any locality in Minnesota or in eastern North Dakota, or in the basis of rates for transportation of grain, whether the shipment originates in Minnesota or North Dakota or is destined to Minneapolis or Duluth or Superior, or in the basis of rates for the transportation of lumber, whether the shipment is destined to a point in Minnesota or to one in North Dakota, or in the basis of rates for the transportation of live stock, whether the shipment originates in Minnesota, North Dakota, or eastern Montana involves an undue and unjust prejudice and disadvantage, in fact, against the localities subject to the higher basis of rates, and an undue and unjust preference and advantage in fact to the localities given the lower basis. Es-

tablishing the rates prescribed by chapter 232, Gen. Laws
532 1907 (Rev. Laws Supp. 1909, §§ 2007-11 to 2007-17), and maintaining these rates for transportation wholly within Minnesota simultaneously with the maintenance of the interstate rates at present maintained for interstate traffic between Superior and localities in Minnesota, North Dakota, and eastern Montana and between localities in Minnesota and localities in North Dakota and eastern Montana, would involve on the part of the Northern Pacific and Great Northern Companies undue and unjust discrimination in fact against shippers, receivers, and localities transacting the interstate business, and would seriously impair the interstate business of the carriers. If the companies shall be compelled to maintain within Minnesota the rates prescribed by chapter 232, they will be compelled to reduce the basis of their interstate rates between eastern Montana and North Dakota points and Minnesota points and between eastern Montana, North Dakota, and Minnesota points and Superior to a substantial parity with the basis prescribed by chapter 232, in order to avoid undue and unjust prejudice and disadvantage in fact against shippers and localities transacting the interstate business, as well as in order to protect the interstate business of carriers against serious impairment.

Such reduction must be substantial. For example, the present rate on soft coal from Duluth to Wahpeton is $2 per ton. The rate prescribed by chapter 232 from Duluth to Breckenridge is $1.31 per ton. That act provides that a minimum car load of soft coal shall be 30,000 pounds or 15 tons. So that the reduction that will be necessary to avoid discrimination against the interstate locality in the rate on soft coal will be $10.35 per minimum car load.

Duluth, Minnesota, Superior, Ashland, Green Bay, Manitowoc, Sheboygan, and Milwaukee, Wis., Gladstone, Mich., Chicago, Ill., the Peoria, Ill., district, the Springfield, Ill., district, the Streator, Ill., district, and the La Salle, Ill., district, are all competitive points for the distribution of coal into the state of Minnesota.

For many years rates on coal from the various distributing points to localities in southern Minnesota have borne such a relation as to admit of free competition of the various distributing points and of the carriers serving them.

If the rates on coal prescribed by chapter 232, Gen. Laws 1907, shall take effect, the result will be substantial reduction in rates on coal from Duluth to southern Minnesota localities. Such a reduction will deprive all these various distributing points in Wisconsin, Michigan, and Illinois of their power to compete with Duluth in its distribution of coal in Minnesota, unless the carriers serving them shall reduce their interstate rates into Minnesota to a parity with those prescribed by chapter 232 from Duluth. If such carriers shall reduce their interstate rates in Minnesota to a parity with the rates prescribed by chapter 232, the relation which now exists between rates on coal from these various distributing points and localities in northern Iowa and in South Dakota will be destroyed, unless rates shall be similarly reduced from these various distributing centers to localities in these two districts.

Interstate rates on cattle, hogs, sheep, and coarse grain would be

affected by the rates prescribed by chapter 232 in the same manner as rates on wheat and coal.

533 Under the milling in transit privileges, so called, owners of wheat at any point in Minnesota, North Dakota, or South Dakota may pay rates equal to the sum of the rate between the point of shipment to Minneapolis and the proportional rate from Minneapolis to Chicago (for many years and at present the sum of 7.5 cents per cwt.), have it milled at Minneapolis, and within a limited period of time forwarded to Chicago as flour.

In order to allow mills located at other towns in Minnesota to compete with Minneapolis, a like milling in transit privilege has been accorded owners of wheat to ship via such other towns as via Minneapolis, and mills have been established in many such towns under a guaranty that rates into the towns in which such mills are located on wheat in and flour out to Chicago should not exceed the rates from the same points to Chicago via Minneapolis with the milling in transit privilege. Chapter 232, Gen. Laws 1907, substantially reduces rates on wheat within Minnesota. The result will be, if that law takes effect, that the milling in transit rate from points in Minnesota via Minneapolis to Chicago will be automatically reduced substantially. Unless, then, all interstate rates between Minnesota points and Chicago via some interior mill town and with a milling in transit privilege shall be reduced to a substantial parity with the reduced milling in transit rate to Chicago via Minneapolis, Minneapolis will have a substantial advantage in its interstate rates on wheat over the various mill towns in the interior of the state, and wheat in general will as a result of this advantage go to Minneapolis.

Passenger Rates.

Prior to the taking effect of chapter 97, Gen. Laws 1907 (Rev. Laws Supp. 1909, §§ 2007–1 to 2007–2), the general basis of rates for the transportation of passengers between any two points on the Northern Pacific system had been for some years 3 cents per mile for passengers of 12 years of age and over, and 1½ cents per mile for passengers under 12 years of age.

Chapter 97, Gen. Laws 1907, prescribes as a maximum for transportation of passengers wholly within the state of Minnesota 2 cents per mile for passengers of 12 years of age or over and 1 cent per mile for passengers under 12 years of age.

After the maximum rates prescribed by chapter 97 were installed, the sum of the locals between Moorhead and other Minnesota points and Moorhead and points westerly thereof was less than the then existing interstate rates between Minnesota points and points westerly thereof.

The result of this disparity between the through interstate rate over Moorhead and the sum of the locals over Moorhead was this: In the first month after the taking effect of Chapter 97, the revenue for passenger business on the Northern Pacific between Moorhead and other Minnesota points increased 647 per cent. over that for the corresponding month of the preceding year, while, eliminating Moorhead busi-

ness, the revenue for passenger business within the state decreased 2 per cent. In June, 1907, the second month after the taking
534 effect of chapter 97, there were sold by the Northern Pacific Company 4,037 tickets between St. Paul or Minneapolis, on the one hand, and Moorhead or East Grand Forks, on the other, as compared with only 172 such tickets in the corresponding month of the year before; and in June, 1907, there were sold only 173 tickets between St. Paul or Minneapolis, on the one hand, and Grand Forks and Fargo, on the other, as compared with 984 such tickets in the corresponding month of the year before. In May and June, 1906, only one cash fare was collected on a train between Moorhead and St. Paul or Minneapolis. In those months in 1907 there were 1,168 full cash fares and 82 cash half fares so collected.

Thus the necessary, immediate, direct effect of the operation of chapter 97 was to deprive the Northern Pacific Company of a substantial amount of its interstate passenger business through Moorhead.

Notwithstanding the facility with which interstate passengers could avoid the discrimination against them by making two contracts with the company, one of which should cover the mileage in Minnesota, discrimination in fact against the interstate passenger through Moorhead on the Northern Pacific still existed, and was practiced. It existed against a passenger who, applying for a through ticket, did not know that the sum of the locals on Moorhead was less than the through rate, against the passenger with a trunk which he could not check through unless on a through ticket, and against a passenger who was compelled to use a sleeping car.

As soon as it reasonably could do so, the Northern Pacific remedied this discrimination by reducing all its interstate fares for passenger transportation through Moorhead to an amount no greater than the sum of the locals over Moorhead. Meantime and before tariffs establishing the new reduced interstate rates over Moorhead had been filed, the state of Wisconsin had enacted a two cents per mile passenger fare law, and the state of North Dakota a two and one-half cents per mile law. The rates, therefore, newly established by the Northern Pacific Company between St. Paul, for example, and points in North Dakota and beyond, were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Minnesota and one-half cent per mile for the mileage in North Dakota. And the rates newly established by the Northern Pacific jointly with other companies for passenger transportation between points easterly of Minnesota and points on the line of the Northern Pacific were in general less than the theretofore existing rates by approximately one cent per mile for the mileage of the transportation in Wisconsin and Minnesota and one-half cent per mile for the mileage in North Dakota.

These reductions in rates were compelled by the necessary, immediate, and direct effect of the operation of the laws of the respective states above recited, not only in order that undue and unjust discrimination in rates might be avoided, but, as well, in order that the

companies might transact interstate passenger business freely and without impairment of volume.

535 Prior to the taking effect of the respective orders complained of and of the two-cents maximum passenger fare law, the tariffs of the Great Northern and Northern Pacific Companies for the transportation of passengers or merchandise in Wisconsin, Minnesota, North Dakota, and South Dakota were fair as between the different states, and the local tariffs in each state were fair as compared with the interstate tariffs between such states or any two thereof; and the tariffs now maintained by the companies and each of them for the transportation of commodities covered by chapter 232 are fair as between these states, and the local tariffs in each state are fair as compared with the interstate tariffs between such states or any two thereof.

The installation of the rates prescribed by the respective orders destroyed that fairness as to merchandise rates, the installation of the two-cents passenger rate destroyed it as to passenger rates, and the installation of the rates prescribed by chapter 232 would destroy it as to rates on commodities covered by it.

It is wholly impossible for carriers situated as are the Great Northern, Northern Pacific, and Minneapolis & St. Louis Companies to maintain materially lower rates or a materially lower basis of rates or a different classification of subjects of transportation, or a different relation between rates for different classes of merchandise, for traffic wholly within Minnesota, than for that between Minnesota and any of its neighboring states without unjust and undue discrimination in fact against the localities in the neighboring states, and without serious impairment of the volume of the interstate business of the carriers. Such lower basis of rates within Minnesota than between Minnesota and its neighboring states would result in the promotion of the growth and prosperity of localities in Minnesota at the expense of localities in neighboring states and the enhancement of the value of property in Minnesota, and the serious impairment of the value of the property of all business men, as well as of that of the carriers themselves in the neighboring states.

Duluth and Superior, Grand Forks and East Grand Forks, Fargo and Moorhead, and Wahpeton and Breckenridge are so situated that each pair must be considered for the purpose of rate making as one locality. Both as a practical matter of the operation of a railroad and in order that undue and unjust discrimination as between the members of any pair may be avoided, each city of each pair must have rates equal to those accorded to the other city. If different rates, a different classification, or a different basis of rates be lawfully prescribed by one regulating power in or out of one city of any pair to those prescribed by another regulating power in or out of the other city of the pair, the carriers serving them both must, in order to avoid undue and unjust discrimination in fact as between them as well as to preserve their own power to transact business with each of them, adopt for each city the lower rates or basis of rates, or classification prescribed for either city.

If it should be necessary for the companies involved, in order that

discrimination may be avoided, or in order that the companies may preserve the volume of their respective businesses in interstate
536 transportation free from impairment in volume, to install for their interstate business a basis of rates no higher than these respectively prescribed in the acts and orders complained of, and to extend the rates for their interstate long-haul business upon the principle provided in said acts and orders, the result will be a substantial diminution in the revenues of the companies from their interstate business. For example, the diminution in the revenue of the Northern Pacific Company for the year ending June 30, 1906, the last fiscal year prior to the taking effect of the order of September 6, 1906, from its interstate business in transportation of commodities covered by chapter 232 alone, if the basis prescribed by chapter 232 had been applied to its rates for such interstate business, would have been $4,193,283.04; and the loss in such interstate revenue for such year for transportation of merchandise covered by the order of September 6, 1906, if the basis prescribed by the order had been applied to its rates for such interstate business, would have been $4,119,761.96. The loss in its interstate business from passenger transportation, if the two-cents maximum rate had been applied during such year, would have been $1,444,955.35, or a total loss, on account of the acts and orders complained of, of $9,758,000.35.

If, in order to prevent discrimination as between different states, it shall be necessary for the companies involved to apply for local business within the respective states, the same basis of rates as those prescribed for business local to Minnesota by the acts and orders respectively complained of, the loss in revenue to the companies involved will be substantial. For example, in the year 1906 the loss in revenue of the Northern Pacific Company, if the basis prescribed by chapter 232 had been applied to its local business in transportation of commodities covered thereby in other states, would have been $198,540.51; and its loss in revenue, if the basis of rates prescribed in the order of September 6, 1906, had been applied to its local business in other states for transportation of merchandise covered thereby, would have been $952,644.83, or a total loss on freight of $1,151,185.34; and, if the two-cents maximum passenger rate had been applied to its local business in other states, the loss in revenue would have been $990,908.82, or a total loss, under the acts and orders complained of, of $2,142,094.16.

The facts which have been recited were found by the master, and the foregoing statement of them is, with rare exceptions, in his clear and concise language. Many exceptions are leveled at these findings, but they are sustained by clear and convincing evidence, and the only question remaining here is: Do they justify the conclusion that the effect of the acts and orders prescribing the Minnesota maximum fares and rates is to impose a substantial burden upon or to regulate or to discriminate against interstate commerce, or to create unjust discrimination between interstate localities? Counsel for the defendants insist that this question should be answered in the negative.

They argue that the prescription and enforcement of these fares and rates cannot constitute an unconstitutional burden upon or inter-

ference with interstate commerce because the orders and acts relate to commerce within the state only and the state has power to
537 regulate the purely local commerce. This contention, however, cannot be sustained because, as has been demonstrated in the earlier part of this opinion, if, by their natural or necessary operation, these acts and orders have the effect substantially to burden interstate commerce, they fall under the ban of the Constitution and beyond the power of the state whatever their terms or the intent of their makers may have been.

They say that, while the reduction of the local fares and rates may induce the companies to reduce their interstate rates and fares across the borders of the state to a parity with the local rates, this is the voluntary act of the companies not directly required by the laws and orders. There are, however, known and inexorable laws of commerce, and one of them is that transported articles will move at the lowest available rates. Reduce local fares and rates so that fares and rates in interstate commerce across the borders of the state are substantially higher than the sums of the locals over the Minnesota stations on or near the state boundaries and the companies must reduce their interstate fares and rates on that portion of their interstate commerce affected by the sums of the locals over the Minnesota borders to a substantial parity with the sums of the locals or their interstate commerce affected thereby will unavoidably become intrastate commerce and move at the sums of the locals. There is nothing voluntary on the part of the companies in the loss or burden imposed upon them by these reductions. That they must suffer whether they reduce their interstate rates or maintain them and permit the transformation of their affected interstate commerce into intrastate commerce by rebilling and local contracts so that it can pass at the sums of the locals. The loss of the difference in revenue between that derived from their former interstate rates and that derived from the sums of the locals is a direct and unavoidable burden upon their interstate commerce imposed by the acts and orders stated which the companies may not by any device avoid.

Moreover, the acts and orders making these intrastate reductions necessarily operate to discriminate against interstate commerce and the right of the companies to carry it on, and in that way constitute a direct burden upon such commerce. Mr. Justice White said in the Pullman Company's Case, 216 U. S. at page 65, 30 Sup. Ct. at page 236 (54 L. Ed. 378), that, though a power exerted by a state may not abstractly impose a direct burden on interstate commerce, yet such exertion will be a direct burden upon such commerce if the power as exercised operates a discrimination against that commerce, or, what is equivalent thereto, discriminates against the right to carry it on. If the companies exercised their right to maintain and did maintain their former interstate rates upon that portion of their interstate commerce affected by the local Minnesota rates, they lost to local commerce that interstate commerce, because it passed by rebilling and local contracts at the sums of the locals. This necessary effect of the local maximum rates was a direct discrimination against interstate commerce and the right to conduct it, and hence a direct

burden upon that commerce. If, on the other hand, to avoid this discrimination the companies reduced their rates, that reduc-
538 tion was a like direct burden, and no course was open to them whereby they could exercise their constitutional right to conduct their interstate commerce free from the direct regulation thereof effected by these acts and orders.

Another vicious and inevitable effect of these acts and orders is the unjust discrimination in fares and rates between localities in Minnesota and those beyond its borders which they effect. Moorhead, Minn., and Fargo, N. D., are practically the same distance from St. Paul, Minneapolis, and Duluth, respectively. They have long received, and they ought to continue to receive, the same fares and rates in and out. This is also true of Duluth, Minn., and Superior, Wis.; Breckenridge, Minn., and Wahpeton, N. D.; East Grand Forks, Minn., and Grand Forks, N. D. These acts and orders reduced the fares to and from the Minnesota towns of these pairs from and to other Minnesota points 33⅓ per cent., and the freight rates from 7 per cent. to 25 per cent., while the former interstate fares and rates from and to the other towns of the pairs remained in effect, as to commodity rates under the protection of the injunction of this court, and would have continued in effect in the matter of merchandise rates and the passenger fares had not the prohibition of discriminations between localities by the interstate commerce law and the laws of trade which have been considered compelled the companies to reduce their interstate rates to a parity with the local rates prescribed. The discrimination thus wrought by these acts and orders between the towns mentioned on the state lines is but illustrative of the undue preference and advantage the local reductions gave to Minnesota cities and towns, and the unreasonable prejudice and disadvantage to which they subjected the towns and the cities of other states similarly situated in their vicinity.

Congress by the "act to regulate commerce" (24 Stat. 379) forbade the companies to make or give any undue or unreasonable preference or advantage to any party or locality, or to subject any party or locality to any unreasonable prejudice or disadvantage in any respect whatsoever, and the prevention of the discrimination thus prohibited was one of the main purposes of this legislation. The first section of the act, however, contained this provision:

"Provided, however, that the provisions of this act shall not apply to transportation of passengers or property, or to the receiving, storage or handling of property wholly within one state, and not shipped to or from a foreign country from or to any state or territory aforesaid."

The result was that the act of Congress forbade, and the acts and orders of the officers of Minnesota compelled, this discrimination between localities under the penalty of the surrender by the companies of a substantial part of their interstate commerce or of the revenue therefrom. Counsel for the defendants argue, however, that this radical discrimination is not forbidden by the interstate commerce law because it is a discrimination wrought, not by an undue difference between intrastate rates of which they say the state has exclusive

jurisdiction, nor by an undue difference between interstate rates of which they admit the nation has exclusive jurisdiction, but by an undue difference between intrastate rates and interstate rates, and they contend that over the discrimination thus wrought neither
539 state nor nation has any power. The argument, however, again disregards the broad and fundamental difference between the power of the state over intrastate commerce and the power of the nation over interstate commerce. The state may regulate its intrastate commerce so far only as the exercise of its power does not substantially burden or regulate or discriminate against interstate commerce, but no farther. A state may not prohibit or regulate discrimination between interstate and intrastate rates in such a way as substantially to burden or regulate interstate commerce, as, for instance, by the prohibition of a higher charge or rate for a short haul wholly within the state than for a long haul that includes the short haul and extends into another state, because such action burdens and regulates interstate commerce. Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27, 42, 43, 22 Sup. Ct. 277, 46 L. Ed. 416. By the same mark, because it is a direct regulation of interstate commerce, the nation may regulate and prohibit discriminations wrought by an undue difference between interstate and intrastate rates, although such regulation or prohibition may also to some extent affect and regulate intrastate commerce. For to the extent necessary completely and effectually to regulate interstate commerce the nation by the Congress and its courts may affect and regulate intrastate commerce. United States v. Colorado & N. W. R. Co., 157 Fed. 321, 331, 85 C. C. A. 27, 37, 15 L. R. A. (N. S.) 167; Brown v. Maryland, 12 Wheat. 419, 448; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Gulf, Colorado, etc., Ry. Co. v. Hefley, 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910; Interstate Commerce Commission v. Detroit, etc., Ry. Co., 167 U. S. 633, 642, 17 Sup. Ct. 986, 42 L. Ed. 306; State Freight Tax Case, 15 Wall. 232, 275, 280, 21 L. Ed. 146; Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 1, 8, 24 L. Ed. 708; Chy Lung v. Freeman, 92 U. S. 275, 280, 23 L. Ed. 550; Railway Co. v. Husen, 95 U. S. 465, 471, 472, 473, 24 L. Ed. 527; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 736, 737, 5 Sup. Ct. 739, 28 L. Ed. 1137; Bowman v. Chicago, etc., Ry. Co., 125 U. S. 465, 479, 480, 481, 484, 485, 488, 489, 490, 491, 507, 508, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Lyng v. Michigan, 135 U. S. 161, 166, 10 Sup. Ct. 725, 34 L. Ed. 150; Norfolk, etc., Ry. Co. v. Pennsylvania, 136 U. S. 114, 115, 118, 120, 10 Sup. Ct. 958, 34 L. Ed. 394; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 35 L. Ed. 649; Osborne v. Florida, 164 U. S. 650, 655, 17 Sup. Ct. 214, 41 L. Ed. 586; Caldwell v. North Carolina, 187 U. S. 622, 623, 23 Sup. Ct. 229, 47 L. Ed. 336. "This power," said Chief Justice Marshall, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified ob-

jects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its Constitution the same restrictions on the exercise of the power
540 as are found in the Constitution of the United States." Gibbons v. Ogden, 9 Wheat. 1, 189, 194, 197, 6 L. Ed. 23; Lottery Case, 188 U. S. 321, 346, 347, 359, 23 Sup. Ct. 321, 47 L. Ed. 492. The power therefore to prohibit the railroad companies from making or permitting any undue discrimination between localities and parties by unreasonable differences between intrastate and interstate rates was vested in Congress, and no acts or orders of the state or its officers could justify such a discrimination. If, as the Supreme Court held in the Eubank Case, a state has no authority to suppress such a discrimination, much less has it the power to create and maintain it.

But counsel insist that, if Congress had the power to forbid this discrimination, it did not exercise it because it declared in the proviso to section 1 that the provisions of the interstate commerce act should not apply to transportation wholly within one state. But the main object of the act was to prevent every undue discrimination between parties and between localities. When it was enacted there was a crying evil in such discriminations, an insistent public demand for the remedy thereof, and a determined effort by the legislators to make the prohibitions of such discriminations as broad, searching, and effective as the Congress had the power to make them. It had, as we have seen, ample authority to forbid discriminations wrought by differences between intrastate and interstate rates, but none to prohibit discriminations caused by differences in rates for transportations wholly within a state. The act prohibits any undue discrimination in any respect whatever between localities under similar circumstances and conditions by any common carrier subject to its provisions. In the light of these facts, the natural and reasonable construction of the proviso in section 1 is that it was inserted out of abundance of caution to make sure that the broad terms of the act did not go beyond the constitutional power of the Congress and directly regulate intrastate commerce more than was necessary completely to regulate interstate commerce, and that it has no farther effect upon the subject of discrimination now under discussion. The evil the act was passed to remedy, the main purpose of its passage, the public demand for a prevention of all discriminations, the patent efforts of the legislators to meet this demand, and the broad terms of the prohibitions themselves compel the conclusion that the Congress intended to exercise, and that by this act it did exercise, its constitutional power to prevent discriminations of the character here in question to its utmost extent, and that the companies were and are prohibited thereby from making or maintaining the unjust discriminations between localities which the maintenance of their former lawful interstate fares and rates and the intrastate rates prescribed by the acts and orders of the officers of the state would necessarily effect. Reliance Textile & Dye Works v. Southern Ry. Co., 13 Interst. Com. R. 48, 54.

The next suggestion is that, if the prohibition of the interstate commerce act applies to discriminations between intrastate and interstate rates, it applies only when the transportation is under substantially similar circumstances and conditions and the acts and orders in question render the circumstances and conditions under which the intrastate rates are charged dissimilar from those which condition the interstate rates. But state laws and orders effecting discrimi-
541 nations forbidden by acts of Congress cannot be held by themselves to create such dissimilar conditions as to warrant the maintenance of such discriminations.

Finally, counsel cite, to overcome the proof of the substantial burden and the direct regulation of interstate commerce effected by the acts and orders in this case, with which this record teems, these words from the opinion of Mr. Justice Brewer in Ames v. Union Pacific Ry. Co. (C. C.) 64 Fed. 172:

"Neither can I understand how the reduction of local rates, as a matter of law, interferes with interstate rates. It is true that the companies may, for their own convenience, to secure business, or for any other reason, rearrange their interstate rates, and make them conform to the local rates prescribed by the statute; but surely there is no legal compulsion. The statute of the state does not work a change in interstate rates, any more than an act of Congress prescribing interstate rates would legally work a change in local rates. Railroads cannot plead their own convenience, or the effect of competition between themselves and other companies, in restraint of the otherwise undeniable power of the state."

The reduction of local rates does not interfere with interstate rates "as a matter of law," yet it may do so as a matter of fact. Whether or not the general and sweeping reductions in local rates in Minnesota necessarily interfere with interstate rates and interstate commerce is in this case, as it must be in every case, a question of fact. The facts which determine that question in this case have been set forth in this opinion at great length, because it is upon them, and not upon legal inferences, that the answer to the question whether or not the effect of the necessary operation of the acts and orders challenged is substantially to burden interstate commerce now rests. Those facts are that it was not for "their own convenience," but at great inconvenience and loss, not on account of the "effect of competition between themselves and other companies," but because these acts and orders, the prohibition of discrimination between localities by the interstate commerce act and the laws of trade, forced them to do so, that the defendants reduced their interstate commerce rates to a parity with the local rates and submitted to the loss of interstate revenue this action entailed. The opinion of Mr. Justice Brewer in the Ames Case is inapplicable to the cases in hand because no such array of condemnatory facts was ever submitted to him in that case, and it is perhaps not too much to say that no case has been found in the books in which any such proof of the unavoidable effect of general reductions of intrastate rates to substantially burden and directly regulate interstate commerce has ever been presented.

Minnesota, North Dakota, South Dakota, and Wisconsin [illegible] vast region 1,000 miles in extent, traversed by the railroads of the defendant companies, which produces the same things, ships to the same markets and consumes the same things bought in the same markets. The conditions of the transportation of passengers and freight in interstate traffic and also in intrastate traffic [illegible] are identical, and a relative, fair, and equable relation between fares and rates in interstate commerce and fares and rates in intrastate commerce had been maintained before the acts and orders [illegible] lenged were made. The railroad companies had established 542 and were collecting their interstate fares and rates [illegible] the act to regulate Commerce enacted by the Congress of the United States. Those fares and rates were [illegible] presumptively reasonable, and neither the officers of the state of Minnesota nor any court, state or federal, could legally [illegible] unreasonable until they had been denounced by the Interstate Commerce Commission, Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S., 426, 27 Sup. Ct. 350, 51 L. Ed. [illegible]. The fares and rates and the traffic in intrastate commerce were so [illegible] interwoven with the fares and rates and the traffic in interstate commerce that a general and substantial reduction of the [illegible] rates in either by its necessary operation compelled a similar reduction in the other, because the interstate commerce would avoid the discrimination that would otherwise result and business would will move only at the lowest available rates. The subject of the fares and rates in interstate commerce through this region is national in its character and capable of regulation by uniform rules, and the railroad companies are therefore free to make and regulate them subject only to the orders of the Interstate Commerce Commission. The officers of the state of Minnesota by the acts and orders challenged made a general and sweeping reduction of 33⅓ per cent. in passenger rates within that state, [illegible] to 25 per cent. in rates on general merchandise, of [illegible] on grain, coal, live stock, and lumber, and of 13.55 [illegible] in rates to distributing points.

The effect of the necessary operation of these acts and orders was substantially to burden and directly to regulate the interstate commerce of the companies by causing the transformation of [illegible] of their transportation upon which their former interstate rates were higher than the sums of the locals over the [illegible] in Minnesota into local commerce at those sums, or by causing the companies to reduce their interstate fares and rates [illegible] the reduced local fares and rates to a parity therewith. This effect was unavoidable because the interstate commerce law prohibits the companies from giving to Minnesota towns and cities the [illegible] unreasonable advantage and from subjecting the cities and [illegible] other states in the vicinity to the undue and unreasonable disadvantages which a maintenance of their former interstate fares and rates and the prescribed local fares and rates would have [illegible] and because passengers and freight will move at the [illegible] able rates.

This effect was not like that of the directions concerning the movements of particular trains, the inspection of animals to guard against disease, the reduction of intrastate rates on one or a few articles of commerce, and similar regulations which were sustained in the cases in the earlier part of this opinion and in others of like character, because their effect upon interstate commerce was so incidental and remote as to be negligible. The effect of these acts and orders was substantial, direct, controlling, and compelling. They are general and sweeping in their terms, they reduce the fares and rates on the great body of intrastate commerce in the state of Minnesota from 7 to 33⅓ per cent., and their inevitable effect is directly and unavoidably to regulate much of the
543 interstate commerce of the defendant companies and unavoidably to cause each of them great loss of revenue therefrom.

No case has been found in the books in which the facts disclose a more substantial burden imposed upon interstate commerce by the acts or orders of the officers of any state than that which the effect of the necessary operation of these acts and orders entails upon the interstate commerce of these companies. If in the early proceedings in the Northern Pacific Case the Supreme Court was moved to say, of the issue whether the necessary effect of these acts and orders was to interfere with and to regulate interstate commerce, "the question is not, at any rate, frivolous," how, now, that their necessary effect upon that commerce has been indisputably proved to be not only general and substantial, but controlling and compelling, may they escape the ban of the Constitution? If one state might by such radical reductions of its local fares and rates below legal interstate fares and rates constitutionally use the laws of trade and the prohibition of discriminations in the interstate commerce law to force like reductions of interstate rates, all states might do so, and the power of the states to regulate fares and rates in interstate commerce would be supreme and that of Congress and the Interstate Commerce Commission inferior and futile. Such does not seem to be the law.

Each of the acts and orders challenged has the natural and necessary effect substantially to burden and directly to regulate interstate commerce, to create undue and unjust discriminations between localities in Minnesota and those in adjoining states, and it is unconstitutional and void.

The master also found that the maximum state rates prescribed by these acts and orders produced incomes sufficient to pay the cost of earning them, taxes and just returns upon the real values of the Minnesota properties of the defendants respectively used to carry on their intrastate commerce in that state. The actual earnings, taxes, and cost of conducting transportation during the year ending June 30, 1908, the year when the fares and all the rates, except the commodity rates, were in actual operation, were proved, and the master found that the net freight income for that year of the Northern Pacific Company from its Minnesota intrastate freight business yielded an annual return of only 1.941 per cent. on the value of its

property used to produce that income, and that if the commodity rates had been in operation this percentage would have been still smaller, that its net income from its intrastate passenger business was sufficient to yield an annual return of only 4.2 per cent., and its net income from all its intrastate business in Minnesota an annual return of only 2.909 per cent. of the values of its property assignable thereto respectively. He reported that the net income of the Great Northern Railway Company from its Minnesota intrastate freight business was sufficient to yield an annual return of only 5.468 per cent. of the value of its property assignable to that business, and if the commodity rates had been in force the return would have been less than 5 per cent., that its net income from its Minnesota passenger business yielded a return of only .925 per cent. on the value of its property assignable to that business, and that the net income from all its Minnesota intrastate
544 business was sufficient to yield an income of only 3.359 per cent. on the value of its property assignable thereto. His report is that, if the acts and orders of which complaint is made had been in force during the fiscal year 1907, the year to which the proof is especially addressed in the case of the Minneapolis & St. Louis Company, the net income derived from that company's Minnesota intrastate business would have been sufficient to pay an annual return of only 2.93 per cent. on the value of its property assignable to that business, that the net income derived from its Minnesota passenger business would have yielded an annual income of only 1.79 per cent. on the value of its property assignable to that business, and that its Minnesota net income from intrastate freight and passenger business would have been sufficient to earn an annual return of only 2.47 per cent. on the value of its property assignable to all its Minnesota intrastate business.

All the Minnesota property of each of these companies devoted to transportation had always been and is used at the same time to conduct both intrastate commerce and interstate commerce. In determining whether or not the fares and rates challenged are confiscatory, the Minnesota intrastate commerce of these companies must be considered by itself. That commerce may receive the benefit of none of the revenue and must bear the burden of none of the cost of interstate commerce. The portion of the value of all Minnesota property of each of these companies which is chargeable with the economic duty to produce a just return by means of the intrastate commerce of that company must therefore first be ascertained, for that is the basic measure of the reasonableness of the return produced by the Minnesota fares and rates and the criterion for the trial of the issue confiscation vel non. In the ascertainment of the necessary facts and in the determination of this issue the master pursued this approved method in the case of each company. Take the Northern Pacific Company for example. He first found the real value of that portion of its Minnesota property devoted to transportation in Minnesota during the year ending June 30, 1908, to be $90,204,545, he apportioned this value between its freight business and its passenger business in that state that was conducted

by the use of the property thus valued on the gross earnings basis, and in that way found $66,445,570 thereof assignable to its freight business and $23,758,975 assignable to its passenger business. On the same basis he divided the values thus respectively assigned to freight business and passenger business between the interstate business and the intrastate business of the company conducted by the use of the property so valued, and in that way apportioned $10,867,837 thereof to the company's intrastate freight business, and $8,159,782 thereof to its intrastate passenger business. From the evidence produced he found that the total freight revenue earned by the use, during the year ending June 30, 1908, of the company's Minnesota property valued, was $9,823,508.35, and that the total passenger revenue was $3,512,538.52. These earnings he divided between intrastate commerce and interstate commerce and found that the intrastate freight earnings were $1,606,771.26, and the intrastate passenger earnings were $1,206,333.09. He found from the evidence that the cost of the freight business con-
545 ducted by the use of the property valued was $5,343,718.25, and the cost of the passenger business was $2,311,631.95. He divided the freight and passenger cost respectively between the interstate commerce and the intrastate commerce and found that the cost of the intrastate freight business was $1,355,273.82, and the cost of the intrastate passenger business was $863,325. He deducted the annual intrastate freight cost from the annual intrastate freight earnings, and thus found the annual net intrastate freight income, which, divided by the value assigned to the intrastate freight business, produced the 1.941 per cent. which he found to be the annual return which the rates challenged yielded upon the value of the Minnesota property of the Northern Pacific Company used to conduct it. In the same way the annual return upon the value assigned to the intrastate passenger business of this company was found, and the same method was pursued in ascertaining the returns yielded to each of the companies by the assailed fares and rates. His findings upon all these matters are terse, clear, and complete. They set forth the values found, the values assigned, the gross earnings, the net earnings, the cost found, the cost assigned, and where they are not drawn directly from the testimony of witnesses they carefully detail the methods and the computations by which they were reached. These findings are drawn from evidence which the master has reported to the court and which fills 19 printed volumes. Exceptions to them and to the report have been taken, and counsel for the defendants by brief and argument seem to have presented every contention and suggestion in opposition to them that learning, ingenuity, and ability enable man to conceive.

Fortunately it is unnecessary to enter upon any review of the authorities, or any discussion of the rules of law, by which the validity, under the fourteenth amendment to the Constitution of the United States, of the acts and orders which prescribed the fares and rates in question must be tried. They are presumed to be reasonable and valid because the Legislature and the Commission have the power to

prescribe fares and rates of this nature on condition that they do not have the effect to deprive the owners of any property whose use is subjected to them, and the legal presumption is that the officers of the state have faithfully discharged their duties and acted within the constitutional limits of their power. Proof that they have not done so or that their acts and orders are violative of the federal Constitution must be clear.

It is, however, beyond the power of a state or of its officers to establish or maintain fares and rates the effect of the enforcement of which is equivalent to the taking of the property of public service corporations for public use without compensation, unless justice to the public requires such a confiscation. Fares and rates must be just, both to the people and to the carrier. In the case in hand justice to the people does not demand that the property of the defendant companies shall be taken for their benefit without just compensation, and fares and rates which do not yield a reasonable return upon the real value of the property of the railroad companies subjected to them are confiscatory in their nature, and the acts and orders which establish or maintain them are unconstitutional
546 and void. "What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public." Smyth v. Ames, 169 U. S. 466, 547, 18 Sup. Ct. 418, 42 L. Ed. 819; San Diego Land Co. v. National City, 174 U. S. 739, 757, 19 Sup. Ct. 804, 43 L. Ed. 1154; San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442, 23 Sup. Ct. 571, 47 L. Ed. 892; Willcox v. Consolidated Gas Co., 212 U. S. 19, 41, 29 Sup. Ct. 192, 53 L. Ed. 382; Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 495.

Numerous exceptions are leveled at the master's findings of the values of the Minnesota properties of the companies used to conduct their intrastate transportation on the ground that they are too high. Speaking generally the same classes of evidence were introduced by the respective parties in the case of each of the companies and what will be said of the proof and the finding in the case of the Northern Pacific Company is applicable to the proof and the finding in the cases of the two other companies. Evidence of the cost of reproduction of the Minnesota property of each of the companies, of the original cost of acquisition and construction thereof, and of the average market value of the stocks and bonds of each of the companies for a reasonable period of time prior to June 30, 1908, was introduced before and considered by the master. He found the value of the Minnesota property of the Northern Pacific Company devoted to public use to be $90,204,545. He found the average market value of the stocks and bonds of the company for a period of five years was $509,824,723. The track mileage of the company in Minnesota was 21 per cent. of the track mileage of the Northern Pacific system, and hence the value of the Minnesota property of the company upon this basis was $107,630,191, nearly $17,000,000 more than the value found by the master. In the absence of competent evidence segregating the property of a railroad company devoted to transportation

from its other property, all its property represented by the market value of its stocks and bonds is presumed to be devoted to public use. Atchison, Topeka & Santa Fé Ry. Co. v. Sullivan, 173 Fed. 456, 466, 97 C. C. A. 1, and the cases there cited. There was evidence in this case, however, that a considerable portion of the property of the Northern Pacific Company represented by the value of its stocks and bonds was not devoted to transportation; but there was no reliable evidence of the value of this property or of its relative value to the value of all the property of the company. For this reason the master rightly and unavoidably concluded that the market value of the stocks and bonds was not a sound premise from which to deduce the value of the Minnesota property of the company devoted to public use. Counsel for the defendants assail this conclusion and found an argument for a lower valuation upon this market value of the stocks and bonds and a statement in a monthly balance sheet of the company which they introduced in evidence and which contained a statement of certain accounts of the company and of the book value of certain securities that appear from that statement not to be devoted to public use and to be held by the company. But this balance sheet was not an admission of the company against interest, the record con-
547 tains no competent evidence of the value of these securities or of the accounts, and therefore the contention of counsel here is without foundation. For similar reasons the market values of the stocks and bonds of the other two companies present no credible evidence that the values found by the master were excessive.

The master found the original cost of the acquisition and construction of the entire railroad systems of each of the companies and the proportion thereof assignable on a track mileage basis to Minnesota. The amounts thus found prove to be much less than the values ultimately found by the master, and for this very good reason: These railroads were pioneers; they were built in large part over the prairies of Minnesota before they were settled and before many of the existing towns, villages, and cities along their lines came into existence. A large part of the right of way of the Northern Pacific Company was granted to it by the nation. The cost of rights of way from 5 to 40 years ago through wild lands, and through towns and villages whose population and the value of the property in which have since been multiplied by from 2 to 10, is obviously no criterion of the value of those rights of way in 1908, when they were used under these fares and rates and when agricultural lands in Minnesota were worth from $35 to $100 an acre, and rights of way and lands for yards and sites for stations in cities like St. Paul and Duluth have wonderfully increased in value. It is a fair return upon the reasonable value of their Minnesota property in 1908 to which these companies were entitled, and the cost of that property at times varying from 5 to 40 years ago may be some evidence; but it is certainly no criterion of its value in that year. In view of these facts the master rightly decided that the cost of reproducing this property new was a more rational and reliable measure of its real value than the original cost of its acquisition and construction or the market values of

the stocks and bonds of the companies, and upon that basis he made his findings.

The Railroad Commission seems to have reached the same conclusion at an earlier date, for in the first part of the year 1906, before these suits were commenced, they had employed Mr. Dwight C. Morgan as their engineer, and had instructed him and had requested the railroad companies to find the respective values of their railway properties in Minnesota on the basis of the cost of their reproduction new. This basis is described in the instructions of the Commission to the companies under date of March 12, 1906, in these words:

"In estimating the value of the physical, real and personal property of the railway companies in the state of Minnesota, an estimate of the cost of reproducing them new is deemed essential as the prime factor. In respect to real estate and construction, this prime estimate is to be made as though the existing railways were not constructed and the regions through which they now extend were occupied as now, by the settlements, improvements, and varied industries. * * * The present value of the physical properties of the railways will be obtained by deducting from the cost of reproduction of deteriorations by time and use, on the date corresponding to that of the estimated cost of reproduction."

A schedule of about 40 items originally suggested by the Commission, and perhaps subsequently somewhat modified was used
548 by both parties in these cases, and their evidence was directed to the values of these items on the basis of the cost of their reproduction new.

The first and largest item on the schedule was "lands for right of way, yards and terminals." In the case of the Northern Pacific Company the evidence on behalf of the complainant tended to show that the cost of reproducing this item was about $25,000,000. The claim of counsel for the Commission now is that the value of this item does not exceed $9,498,099.27, and the master found that the cost of its reproduction and its value were $21,240,562. In the testimony the item is divided into lands for rights of way, yards, and terminals in St. Paul, Minneapolis, and Duluth, which for brevity will be called "terminals," and other lands for rights of way, yards, and sites for stations through the other cities, towns, and villages and through the country, which will be termed "lands outside of terminals." The evidence for the defendants regarding this item consists of an estimate made and verified by Mr. Morgan and corroborating purchases and sales. Mr. Morgan had never bought and sold any real estate, except his homestead, nor was he acquainted with the value of real estate in general. To ascertain the value of the terminals in each of the three cities he took from the county records the considerations recited in the records of deeds of a large number of lots and lands in each of the cities, compared them with the assessed values of those lots and lands, and found the per cent. that on the average the assessed values were of the considerations recited in these records. In St. Paul this was about 60 per cent. He then laid out strips of lands of varying widths along each side of the railway lands he desired to value, divided these strips into such sections as he thought were of about uni-

form value, found the values of the land in these sections from their assessed values on the theory that the assessed values were, in St. Paul, 60 per cent. of their real values. From these values of the sections of his strips he deduced the values of the railway lands between the strips by a comparison of areas. To the values of the railway lands thus ascertained he added 75 per cent. because in his opinion it costs railroad companies 75 per cent. more than the normal market value of lots and lands in these three cities to obtain such irregular tracts as they need and now own. To ascertain the value of the lands outside of terminals, he searched out himself and by means of employés the prices at which many lots and lands throughout the region traversed by the railroads had been sold, and from these prices he estimated the value of the lands of the railway companies, and then multiplied these values by three, because, as he testified, it costs railway companies three times the normal value of lands to procure the irregular tracts necessary for their rights of way and station grounds through agricultural lands and the smaller towns, cities, and villages. By these means Mr. Morgan found and testified that the cost of reproduction, and hence the present value of the land for right of way, yards, and terminals, of the Northern Pacific Company, was $15,385,078.47. At the request of counsel for the defendants he made another estimate in which he omitted to use the multiples 75 per cent. of the normal terminal values and three times the normal values of lands outside the terminals,
549 and disclosed therein the fact that if these multiples were not used his estimate would become $9,498,099.27, the value for which counsel for the defendants argue. But neither Mr. Morgan nor any other witness came to say that the latter was the true cost of reproduction or the real value of this item of the schedule. The defendants also introduced evidence of purchases and sales that tend to sustain Mr. Morgan's estimate of the value of this item.

On the other hand, the evidence for the complainants was, as to the terminals in the three cities, the testimony of three residents of each of those cities engaged in the real estate business, of long experience and accurate knowledge of the values of real estate in their respective cities, as to the values of the terminals of each of these companies, the testimony in the Northern Pacific Case of Mr. Cooper, the land commissioner of that company, who was in charge of its rights of way and had purchased for it since 1903 property for which there had been paid $6,139,542.35, and who had a general knowledge of the property in question and its value, the testimony in the cases of the other companies of officers thereof similarly qualified, and evidence of purchases and sales which tend to sustain the evidence of these witnesses. As to the lands outside of the terminals, the Northern Pacific Company produced the testimony of Mr. Cooper and proof of purchases and sales for railway purposes which tend to prove that his testimony of the cost of reproduction and the value of the property was not substantially above prices that had actually been paid for like property. He testified that he had much knowledge from his experience and observation of the cost and value of these lands outside the terminals, that he verified his knowledge by

investigating the purchases and sales of property in the vicinities of these various rights of way, that the necessary cost of obtaining such rights of way by a railroad company was three times as much as the normal value of the land, and that his testimony of the value of these tracts was based upon that fact. The evidence in the other two cases was of the same character. In each of the three cases the master added to the values of the terminals in St. Paul and Minneapolis, established by the testimony of the real estate dealers and Mr. Cooper, 5 per cent. for the cost of acquisition and consequential damages and to the values of the lands for terminals in Duluth, verified by the witnesses for the companies, 25 per cent. for railroad value and the cost of acquisition and consequential damages, and from the values of lands outside terminals, established by the evidence for the companies, he deducted 25 per cent. The result was that his ultimate finding of the value of the first item on the schedule was about $4,000,000 below the value which the testimony of all the witnesses, except Mr. Morgan, sustained, about $6,000,000 above that which Mr. Morgan's testimony supports, and about $11,000,000 above the amount which counsel for the defendant now urge the court to adopt. This finding of the master is assailed because he allowed 5 per cent. of the value of the terminals for cost of acquisition and consequential damages, because he increased the values of the terminals at Duluth, established by the testimony of the real estate dealers, 20 per cent. for the reason that they
550 failed to give due weight to the value of these terminals for railway purposes, because the companies' estimates of the value of this item included an addition to the values of the St. Paul and Minneapolis terminals fixed by the real estate dealers of 25 per cent. thereof for railroad value, and because he failed to follow the theory of Mr. Morgan and to adopt the value which Mr. Morgan would have found if he had discarded his multiples.

But the evidence in this case is conclusive, nay, we may say it is without conflict, that every railroad company is compelled to pay more than the normal market value of property in sales between private parties for the irregular tracts it needs and acquires for rights of way, yards, and station grounds. The defendants' witness, Mr. Morgan, testified that in his opinion the companies necessarily paid three times the normal value for the lands outside of the terminals in the three cities and 75 per cent. more than the normal value for their terminals within those cities. The master in effect found that the cost of reproduction and the present value of the lands for the terminals in the three great cities, including therein all cost of acquisition, consequential damages, and value for railroad use which he allowed, was only about 30 per cent. more than the normal value of the lands in sales between private parties. He found the value of the lands outside the terminals to be only twice their normal value. Findings of lower values would have been contrary to the great weight of the evidence and without substantial support therein.

The measure of the value of real estate is its market value for its most available use. There was uncontradicted evidence that the most available use of the terminal lands in Duluth, the use for which they

were of the greatest value, was their use for railroad purposes, that they were indispensable for those purposes, that the real estate dealers who testified to their values had fixed them originally in 1906, without regard to their value for railroad uses, and that since that time they had advanced in value from 15 to 25 per cent. Thus the proof is ample to sustain the addition to this 1906 estimate of the value of these lands of 25 per cent. thereof for railroad value, cost of acquisition, and consequential damages which the master allowed.

But counsel argue that this court should disregard Mr. Morgan's multiples and fix the value of this entire item at the amount that his estimate would produce if his multiples were not used, $9,498,099.27, because the original presumption was that the fares and rates fixed by the Legislature and the commission were just and reasonable, clear proof was requisite to overcome that presumption, if there is any substantial evidence to the contrary the proof is not clear, and the master's findings must be presumed to be wrong, and Mr. Morgan's evidence is sufficient to enable one fairly, in the exercise of an honest judgment, to disregard the findings of the master and the evidence which supports it, and to adopt the lowest value claimed. This contention is urged with such force and frequent repetition in brief and argument, and is applied so persistently to the various specific findings of the master, that it deserves consideration.

Rate making, the determination of what shall be the railroad rates in the future, is a legislative function. But rate judging, the determination whether rates already made yield a fair return upon
551 the reasonable value of the property used to earn them, or take that property without just compensation in violation of the Constitution, is a judicial function. Prentis v. Atlantic Coast Line, 211 U. S. 210, 226, 228, 29 Sup. Ct. 67, 53 L. Ed. 150; Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission (C. C.) 164 Fed. 645, 648. Why should the presumption that the judicial officer, on whom the duty to perform the latter function is imposed by the law, rightly discharges that duty and reaches just conclusions, be less persuasive than the presumption that legislative officers faithfully discharge theirs? When a rate is made under legislative authority, the legal presumption is that it is fair and reasonable, and proof to the contrary must be clear, especially in cases in which the rates challenged have never been in operation and injunctions are sought while their effect is yet speculative.

But the question whether fares and rates which have been put in operation confiscate the property of the companies in violation of the Constitution of the United States is a judicial, and not a legislative, question. And when that issue is presented the rules of law, of equity, and of practice applicable to the determination of judicial questions have effect. When, therefore, rates have been tried by actual use for many months, and their effect has become known and is proved, when the issue whether or not they take the property of the railroad company without just compensation has been made in a competent court, and all parties have introduced, in the presence, and subject to the cross-examination and rebuttal, of each other, all the evidence they desire, when that issue and the numerous subordi-

nate issues it involves have been heard and decided, as they have been in the case in hand, by a master, who has personally heard the testimony of every witness, received and examined all the evidence, and made specific findings of every material issue of fact in the case, the judicial presumption arises that his findings are right. This is a presumption of reason as well as of law, a presumption that forces itself upon and compels the reflective mind. Take the general issue. The Legislature and the Commission decided it upon the information they had acquired as to the probable effect of the rates they were making before those rates were tried. The master decided it after the fares and all the rates, except the commodity rates, had been tried for many months and their actual effect was known and proved. The former decision was based on the conjectural effect of the rates; the latter, on their actual effect. The master decided this issue upon a full trial, in which all parties produced all their evidence, subject to the cross-examination and rebuttal of each of the other parties, in the manner which the wisdom and experience of centuries has taught is most conducive to the discovery of the truth and the administration of justice. The Legislature and the Commission decided it without such trial or such proof.

Doubtless, if the fares and rates had been tested by the actual operation of the railroads under them, and the plenary proof of their effect and of the other facts presented to the master had been introduced before the Legislature and the Commission, they would have reached the same conclusions which the evidence forced upon the master's mind. They decided the issue upon evidence
552 more conjectural or speculative; he, upon proof more certain and conclusive. And the presumption that a master learned in the law, accustomed by long experience at the bar and on the bench to hear and analyze evidence and draw just conclusions therefrom, has faithfully discharged his judicial duty and reached right results, is not less strong than the presumption that the Legislature and the Commission rightly discharged their official duties. The result is that when, after fares and rates have been in effect for months, plenary proof of that effect and of other facts pertinent to the issue of confiscation vel non is made before a master who finds the facts, the legal or judicial presumption that his findings are just and right, while not conclusive, is superior to the original presumption that they were just and reasonable, which arose before they were or could be tried, and it prevails over it. The question, therefore, upon the exceptions to the master's report, is not, is there any evidence upon which one might fairly, in the exercise of an honest judgment, reverse his findings? But it is, are the findings which are presumptively right sustained by clear proof? If they are, they should be affirmed, and the exceptions to them should be overruled.

Returning now to the finding of the value of the first item of the schedule, it is sustained by the testimony of nine real estate dealers familiar with the values of the properties in their respective cities, by the testimony of the officers of the companies who were well acquainted with the properties and their values, who had purchased

rights of way that cost many millions of dollars, and by the corroborative evidence of purchases and sales at prices approximating the values found. It is met by the theoretic value of Mr. Morgan, based on his assessment sales method of proof, and by evidence of purchases and sales corroborating it. But the foundation of this value is what copying clerks wrote that grantors in deeds wrote were the considerations of their conveyances of certain properties, and all of these parties were strangers to the parties to this suit. It is conditioned by Mr. Morgan's opinion of the number of such considerations it was necessary to use to discover the true relation of considerations of deeds or presumptive values of properties described therein to their assessment values, by his opinion as to the width of the strips on each side of the rights of way and as to the number and the lengths of the sections of the strips requisite to ascertain just measures of the values of the rights of way between them. He concedes, and counsel for the defendants do not deny, that his method would not reliably indicate the value of any specific lot or tract of land of moderate dimensions, and it is difficult to understand how it can escape the maxim, "falsus in uno, falsus in omnibus." A careful consideration and analysis of Mr. Morgan's testimony and of the other evidence introduced to support it has convinced that they are too indirect, uncertain, and inconsequential to overcome the direct and convincing proof of the values of these properties which the complainants have made, and the exceptions to the master's findings of these values must be overruled.

Exceptions were taken to the allowance of interest at 4 per cent. per annum on the cost of the reproduction of the railroad properties during one-half of the estimated times of their construction. But the evidence is conclusive that moneys invested for the pur-
553 chase of rights of way for, and in the construction of, railroads, ordinarily produce no net income during the period of construction, that the amount of capital thus losing returns is ordinarily equal to one-half of the cost of reproduction during the entire period of construction, or to the entire cost during one-half of that period. There is no doubt that interest at a fair rate on the capital invested in materials and labor that remain idle during construction is as much a part of the cost of constructing or reproducing a railroad as is the money paid for those materials or that labor. Brunswick Water District v. Maine Water Company, 99 Me. 371, 59 Atl. 537, 542. Mr. Morgan, the engineer and witness for the defendants, allowed in his report to the Commission, and verifies the justice of an allowance, of 4 per cent. per annum during one-half of the period of construction; but the amounts he allowed were less than those found by the master, because his estimates of the cost of reproduction and of the times requisite for construction were less. The weight of the testimony on this subject, however, sustains larger amounts than those fixed by Mr. Morgan or the master, and there was no error against the defendants in the latter's finding and allowance of the item here under consideration in either of the cases in hand.

The Minnesota Transfer Railway Company is a corporation and

the joint agent of the owners of ten different lines of railway for the interchange of their freight traffic in St. Paul and Minneapolis. Each of the ten owners owns one-tenth of the property of the Transfer Company by virtue of an ownership of stock. The St. Paul Union Depot Company is a like corporation and joint agent of the owners of nine lines of railroad for the exchange of their passenger traffic, and it is owned by nine constituents in the same way. Each of the three defendant companies owns one share in each of these terminal companies, and the latter corporations and their properties are operated and used as tools of the railroad companies that own them, to conduct transportation for their exclusive use and benefit. The defendants complain because the master allowed to each of these three companies $1,186,191 as the cost of reproduction and the value of their respective interests in the property of these subsidiary companies, and because he allowed to the Northern Pacific Company $1,180,151 for the cost of reproducing and the value of its interest in a similar corporation and its property used by the Northern Pacific Company for a like purpose at Duluth. It is not claimed that these interests are not worth, or that their cost of reproduction would not be, the amounts allowed; but it is contended that these values are not allowable at all, because they are represented by the stocks and bonds of the subsidiary companies. But these interests in these terminal corporations and their property are the most indispensable parts of the Minnesota properties of the defendant companies used to earn the fares and rates here in question, and any estimate of the value or of the cost of reproduction thereof which omitted the value or the cost of reproduction of these interests would have been incomplete and deceptive. The master rightly considered and allowed their value.

There are exceptions because the master allowed to the Northern Pacific Company $1,613,612.76, to the Great Northern Com-
554 pany, $3,219,642, and to the Minneapolis & St. Louis Railroad Company $608,896.43, for the solidification and adaptation of their respective railroads, and deducted nothing from the cost of reproduction for depreciation. But these amounts are those allowed by the defendants' engineer and witness Morgan in his original estimates of the cost of reproduction which he reported to the Commission, and there is much other evidence in the record to sustain them. It is clear that a new railroad may appreciate or depreciate as it grows older. It may be renewed, repaired, and improved day by day and year by year as it is operated, until its embankments become more solid, its culverts and bridges firmer and more reliable, its ties and rails more steadfast and secure, and its rolling stock more seasoned and better adapted to its service and to the railroad it traverses, and until the whole property becomes more valuable than it was when it was first constructed. On the other hand, its embankments and its roadbed may be neglected and permitted to deteriorate by the action of rain, snow, and frost, its ties may be allowed to become partially decayed, its bolts and rails loose, and its rolling stock worn, without adequate repairs, until the entire property suffers great depreciation. Whether at a given

time a railroad property is more or less valuable than it would be if it had just been constructed is a question of fact, that in a suit of this nature must be answered by the evidence. That evidence in this case is that the railroads, rolling stock, and appurtenances which constitute the great transportation machines of these companies in Minnesota are in better condition for use, more efficient, more steadfast, better adapted to each other, than if their construction was just completed, that all depreciation has been offset by appreciation, and that values to the amounts here allowed by the master have been added to the values of these properties new, by their age, their repairs, their renewals, their adaptation, and the assured efficiency that comes from constant careful maintenance and operation. There was no error in these allowances.

Many other exceptions were taken to items which constitute parts of the values found by the master. Each one of them has been examined in the light of the evidence, the arguments, and the briefs. They challenge matters less important than those that have been reviewed, and no good purpose would be served by stating and discussing them in detail. Suffice it to say that none of these exceptions is sustained by the record, and the result is that the findings of the values of the Minnesota properties of the three companies by the master must be confirmed.

The master divided the values of the Minnesota properties between freight business and passenger business and between interstate business and intrastate business on the basis of the respective gross earnings of these classes of business. Counsel for the defendants challenge this basis of division, and contend that the apportionment should have been made on the basis of the use made of the property by each of these classes of business, measured either (1) by the aggregate number of the ton miles and passenger miles of the respective classes, or (2) by the aggregate number of the car miles and engine miles of these classes. They say that if that
555 proportion of the value of the property of a company which the number of ton miles hauled by it in Minnesota bears to the aggregate of its ton miles and passenger miles in Minnesota be assigned to its freight business, and that proportion which its number of passenger miles bears to the same aggregate be assigned to the passenger business, and if that proportion of the value thus assigned to the freight business which the aggregate of the car miles and engine miles appertaining to the intrastate freight business bears to the car miles and engine miles used in the freight business be assigned to the intrastate freight business, and the same method be pursued in apportioning value to the intrastate passenger business the apportionment will be more equitable and just. The issue is between apportionment by use without regard to the worth or value of the use and apportionment according to the value of the use. The latter basis seems to be more logical and rational. Capitalization is founded on the worth of use, not on mere use. The value of property and of investment in every form is measured by the value of its use, not by its use divorced from the value thereof. The Minnesota Railroad Commission, the railroad companies, all

rate makers, base their rates primarily on the [illegible] of the use of the railroad machines by the various classes of freight and by the passengers, and not on the amount of that use. The [illegible] hauling a ton of merchandise of the first class a mile is not the same as the rate for hauling a ton of merchandise of class [illegible] mile. Because the former ton mile uses the railroad property five times as much as the latter, but because the use by the former is worth more than the use by the latter. Moreover, there is no unit of measurement of ton miles and passenger miles, of freight car miles and freight engine miles, or of passenger car miles and passenger engine miles, divorced from the values of the uses they make of the railroad property, from the classes of loads they carry and the distances these loads are hauled. Indeed, there is no proportioning or measuring relation between such varying uses of property, unless due regard is given to the values of these uses.

On the other hand, the values of the uses, the earnings of the property, unavoidably condition the value of the property used, and present a natural and equitable basis of apportionment of the value to these uses. Cases may indeed be imagined in which this basis does not produce persuasive results. One of them was suggested by Mr. Justice Brewer in Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins, 176 U. S. 167, 176, 29 Sup. Ct. 336, 44 L. Ed. [illegible], and others of like character have been presented in argument [illegible]. But no basis has been suggested and none has been [illegible] which seems to be more equitable or more accurate. It may be [illegible] there is no basis or method that brings perfect or ideal results. But because the ton mile and passenger mile basis has no common unit of measurement, because that basis and the car mile and engine mile and the passenger car mile and passenger engine mile bases ignore the effect of the values of the uses made of the railroad property by the various classes of freight and by the passengers carried, because there is really no proportioning relation between such differences in their values and the value of the property used, because these bases

ignore the differences in the classes of freight carried and in
556 the distances they are hauled, because the apportionment of the value of railroad property on the basis of the gross earnings of the classes of business, which discloses approximately the values of their uses of it, gives effect to these material differences, appeals more persuasively to the reason and produces results more equitable than any other basis suggested and because this basis has commended itself to the judgment of, and has been adopted by, the courts upon whom duties of apportionment of this nature have been imposed in like cases, the master was justified in following their decisions and his action and report in this regard is confirmed. Ames v. Union Pacific R. R. Co. (C. C.) 64 Fed. [illegible]; Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins (C. C.) 80 Fed. 357, 370; St. Louis & S. F. Ry. Co. v. Hadley (C. C.) [illegible] 348-352; Northern Pacific Ry. Co. v. Keyes (C. C.) 92 Fed. [illegible] 57; In re Arkansas Railroad Rates (C. C.) 165 Fed. [illegible]; Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 170 Fed. [illegible] 497.

In the cases of the Northern Pacific Company and the Great Northern Company exceptions are urged to the master's division of common cost between freight business and passenger business, to his finding that the cost of doing intrastate freight business was 2½ times the cost of doing interstate freight business, and to his finding that the cost of doing intrastate passenger business was 15 per cent. more than the cost of doing interstate passenger business. About 60 per cent. of the cost of doing the passenger and freight business in Minnesota consisted of items which in themselves disclosed the fact that they were incurred either in doing the passenger or in doing the freight business. All parties conceded that these items were properly assigned to the freight business and the passenger business, respectively, by the railroad companies, and these are termed "allocated items." The remaining 40 per cent. of the cost consisted of items incurred for the common benefit of the passenger business and the freight business, and there was no method of assigning these items that was certain to be mathematically and absolutely correct. Two methods were advocated by the respective parties to this controversy. The defendants introduced in evidence an allocation of these items made by Mr. Conway W. Hillman, an expert railway accountant, without extended experience as a railroad operator, whereby, in the Northern Pacific case, about $400,000 more common cost, and in the Great Northern case, about $900,000 more common cost, was assigned to the passenger business, and a correspondingly less amount to the freight business, than was assigned by the companies and confirmed by the master. This division was supported by the testimony of Mr. Hillman that in his opinion it was right and reasonable and by his statement of his reasons for this belief. But no other witness came to support his view. On the other hand, a large number of witnesses, who had long been familiar with the details of the expense of operating railroads, who had enjoyed a long experience in their actual operation, and who had considered in the light of their knowledge and experience and formed opinions concerning a just division of this common cost, testified that the allocation made by the companies and finally adopted by the master was fair and just. This testimony was buttressed by evidence that this basis of division
557 had been used by these and other railroad companies for their own information and convenience for some time before the questions here at issue had arisen, and that it had at one time received the approval of the Interstate Commerce Commission. So it is that whether the knowledge, experience, and opportunities of the witnesses to form correct judgments upon this issue or their numbers be considered, the great preponderance of the evidence sustains the division made by the master, and it must stand.

All admit that the cost of doing intrastate business exceeds the cost of doing interstate business, and the issue is, how much does the cost of doing the former exceed the cost of doing the latter? Upon that issue many hundreds of printed pages, a mass of evidence too vast for recital or review, has been examined and con-

sidered by the master and the court. The evidence for the state consists of the testimony of Mr. Hillman, and the evidence for the complainants is the testimony of six men who have long been engaged in and are familiar with the actual operation of railroads and the expenses thereof. Many criticisms of the testimony of each of these witnesses, of their opinions, and of the reasons they give for them, have been made by counsel for the respective parties, and have been the subjects of study and reflection in the light of the evidence and the arguments. Mr. Hillman's conclusion in the Northern Pacific case, and it was similar in the other cases, was that the cost per ton per mile of doing intrastate business was about 44 per cent. more than the cost of doing interstate business. Starting with the cost of doing business which was entirely local upon certain branch lines of the company, a cost which he extracted from its records, and with the assumption that the cost per ton per mile of doing the local business on the main lines of the company was the same as it was on the branch lines, he derived this result from these premises, from other records and reports of the company, and from a long and intricate series of computations, assumptions, and deductions. No chain, however, is stronger than its weakest link, and an examination of the method he pursued and the bases upon which he founded his conclusion has convinced that the result he deduced is conditioned by so many of his own opinions and assumptions, unsupported by other persuasive proof, that his conclusion is entitled to no more weight than his opinion that it and the means by which he reached it are correct.

Many witnesses, however, whose evidence disclosed the facts that they had long been engaged in the actual operation of railroads, that they had learned and knew from actual observation and experience the conditions which increased and diminished the cost of the transportation of freight, and the relative effect of these conditions upon the cost of interstate and intrastate transportation, that they were familiar with the details of the relative expenses of doing intrastate and interstate freight business, witnesses whose opinions are certainly as likely to be sound as that of Mr. Hillman, came and testified that, while they had no means of accurately and mathematically determining the fact, they were confident in the opinion that the cost per ton per mile of doing intrastate freight business was from three to six times the cost per ton per mile of doing interstate business. Counsel for the defendants say that a portion
558 of local business is interstate business and takes a short haul, and a portion of through business is intrastate business and takes a long haul, and that the effect of the testimony of these witnesses is not that the cost per ton per mile of intrastate freight business is from three to six times the cost of inter-tate freight business, but merely that the cost of local and short-haul business bears that relation to the cost of through and long-haul business. The testimony of these witnesses has been considered in view of this criticism, but the record does not seem to sustain the contention of counsel. For example, Mr. Elliott says that the average haul of intrastate freight in Minnesota on the Northern Pacific

Railroad was about 104 miles, that the average haul of interstate freight touching Minnesota on that railroad was about 485 miles, that the expense of short hauls is much greater than that of long hauls, and after enumerating various other reasons he testified that these reasons "all lead me to the conclusion that the so-called short-haul intrastate business costs anywhere from three to six or seven times as much as the so-called long-haul, through interstate business." On his redirect examination he was asked if by the statement which has just been quoted he meant "to compare the average cost of the state business with the average cost of the interstate business," and his answer was, "That was my intention in making that statement in my direct examination last week." Mr. Doddridge testified in the Great Northern case that his judgment was that upon the basis of ten miles, excluding the Missabe ore traffic, the ratio of extra cost per ton per mile of intrastate Minnesota freight was at least three times, and maybe four times, as great as that of interstate freight. True, much was said in the testimony of these and other witnesses of the extra cost of short hauls over long hauls, and of local business over through business, for the witnesses had in mind that a larger proportion of the interstate freight than of the intrastate freight was through business and took the long hauls; hence the terms "local freight" and "local business" appear to have been frequently used in this case and in other cases of this character to mean intrastate freight and intrastate business. But, when all the testimony of each of the six witnesses for the complainants upon this issue is considered together, it is persuasive that their testimony clearly discloses their opinions that the cost per ton per mile of the intrastate freight business of the two companies in Minnesota was from three to six times the cost of their interstate freight business in that state. The testimony of Mr. Hillman on behalf of the defendants falls far short of prevailing over this evidence, and the exceptions to the finding of the master that the cost of the Minnesota intrastate freight business of the companies per ton per mile was at least 2½ times that of the interstate freight business must be overruled. For similar reasons the master's finding that the cost of intrastate passenger business per passenger mile was 15 per cent. more than that of interstate passenger business is confirmed. Missouri, Kansas & Texas Ry. Co. v. Love (C. C.) 177 Fed. 493, 499; In re Arkansas R. R. Rates (C. C.) 163 Fed. 141, 142; Chicago, Mil. & St. P. Ry. Co. v. Tompkins, 176 U. S. 167, 20 Sup. Ct. 336, 44 L. Ed. 417; Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S. 257, 262, 22 Sup. Ct. 900, 46 L. Ed. 1151; Ames v.
559 Union Pacific R. R. Co. (C. C.) 64 Fed. 165, 184; Northern Pac. R. R. Co. v. Keyes (C. C.) 91 Fed. 47, 54; St. Louis & S. F. R. R. Co. v. Hadley (C. C.) 168 Fed. 317, 348. The master did not rest his final conclusions on this relatively greater cost of intrastate business per ton per mile without a careful consideration and credit to the intrastate business of the relatively greater revenue per ton per mile derived from that business, thus reducing the percentage for the freight business in the Northern Pacific case,

for instance, from 250 per cent to 173+ per cent., and for passenger business from 115 per cent. to 113+ per cent.

Complaint is made that the master finds that the companies are entitled to a net return of 7 per cent. per annum upon the respective values of their properties devoted to this public use. The character of the business in which an investment is made, the locality in which it is placed, the returns secured in that locality from other investments of a similar nature, the uniformity and certainty of the return, and the risks to which the principal and the income from it are subjected condition the measure of a fair return upon capital invested. An investment in a bank, in a factory, in a mercantile, manufacturing, or agricultural business, is substantially free from regulation by the government and exempt from any duty to the public, except that of paying taxes. If the business in which such an investment is made is unprofitable, its owners may promptly discontinue its operation until more prosperous days come and then return to their undertaking. An investment in a railroad which operates in many states is subject to the regulation of its business by many governments. Its owners owe the duty to the governments and to the public to operate their railroad continually in days when its operation is unprofitable as well as when it is remunerative, a duty they must discharge under the penalty of the forfeiture of their property if they fail. In view of these facts, they ought to be permitted to receive a return large enough to enable them to accumulate in prosperous days a surplus sufficient to enable them to protect their property in days of disaster and to make their average return through days of prosperity and of adversity fair and just. The lands in Minnesota through which these railroads extend are fertile and productive. The cities, villages, and towns they reach are rapidly increasing in population and wealth, and the people they serve are thriving and successful. The evidence satisfies that the railroads are maintained in excellent condition, that they are efficiently and on the whole economically managed and operated, and are rendering commendable service. Justice to the thriving people they serve does not require that the owners of these railroad properties should be deprived of a fair return upon their values. To deprive them of such a return would prevent advances and tend to compel reductions in the wages and salaries of their employés, would tend to prevent the extension of their lines into portions of the state where the development and accommodation that railroad service assures would be welcome and may be needed, to deteriorate the character of the service they render, and to retard the general prosperity. The legal rate of interest on a debt in Minnesota, in the absence of contract, is 6 per cent., and by contract it may be 10 per cent.
560 per annum. Rev. Laws Minn. 1905, § 2733. Rational investments in agricultural, manufacturing, mercantile, and other industrial pursuits, and even well-secured loans, yield returns in Minnesota corresponding with these lawful rates. Investments in railroads and the returns thereon are at the risk of failures and partial failures of crops, of the disasters, delays, and expenses of

unusual storms, snow, and cold, of the great financial disasters which occasionally prevent or delay the movement of traffic, and of the burden of continuous operation whether profitable or unremunerative. It is an axiom in economics that the greater the risk the greater must the return be upon invested capital, and the conclusion is irresistible that a net return of 7 per cent. per annum upon the respective values of the properties of these companies in Minnesota devoted to transportation is not more than the fair return to which they are entitled under the Constitution of the United States.

Other exceptions were taken by the defendants, but they must be overruled, because they are not of the controlling character of those that have been discussed, and they are not sustained by the record. For the same reasons, the exceptions of the complainants must share a like fate.

The findings of the master must be confirmed. The fares and rates prescribed by the acts of the Legislature and the orders of the Railroad and Warehouse Commission which have been considered, have been, are, and will be, as to each of these railroad companies, unreasonably low, unjust, and confiscatory. Each of those acts and orders is violative of the fourteenth amendment to the Constitution, and void, and a decree for the complainant must be rendered in each of the cases.

It is so ordered.

(Endorsed:) Decision confirming Master's Report, &c. Filed April 8th, 1911. Louise B. Trott, clerk.

561 Unittd States Circuit Court, District of Minnesota, Third Division.

In Equity.

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Decree.

This cause came on for final hearing on the evidence, the report and findings of the Master and the exceptions thereto, Walter H. Sanborn, Senior Circuit Judge, presiding, and was argued on behalf of the complainants by Mr. Jared How, Mr. Charles W. Bunn, Mr. Hale Holden and Mr. Pierce Butler (Mr. Robert Thorne and Mr. William D. Mitchell were with them on the briefs), on behalf of the defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist by Mr. Edward T. Young and Mr.

[State Commission Form—Steam.]

Copy & abstract of

ANNUAL REPORT

OF

THE MINNEAPOLIS & ST. LOUIS R. R. CO.

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1909

(Endorsed)
FILED
May 8th 1911
LOUISE B. TROTT.
Clerk.

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. RATE.	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Capital Stock: Common,	60000	100.00	6000000	6000000	164100	None	5835900	✓	None
Preferred,	40000	100.00	4000000	4000000	34100	None	3965900	5%	198170.00
TOTAL,	100000	100.00	10000000	10000000	198200	None	9801800		198170.00

PURPOSE OF THE ISSUE.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,					
	Preferred,					
Issued for Construction of New Properties:	Common,					
	Preferred,					
Issued for Additions and Betterments:	Common,					
	Preferred,					
Issued for Purchase of Railway or Other Property:	Common,					
	Preferred,					
Issued for Acquisition of Securities:	Common,					
	Preferred,					
Issued for Reorganization:	Common,			60000		
	Preferred,			40000		
	TOTAL,			100000		

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM. Date of Issue.	TERM. Date of Maturity.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
Annie to Ft. Lead	2-1 1877	2-1 1927	1100000	950000			950000	7	J & D.	66500 00	66500 00
Ft. Lead Ext.	12-1 1880	12-1 1910	696000	696000			696000	7	J & D.	44520 00	44520 00
Sec. Ext.	4-1 1881	4-1 1921	6000000	1382000			1382000	6	A & O.	82920 00	82920 00
of Consol.	11-2 1894	11-2 1994	10000000	5282000			5282000	5	M. & N.	264100 00	264100 00
Ext. & Ref.	3-1 1899	3-1 1949	25000000	11987000	117000		11870000	4	M. & S.	431671 39	431671 99
James Ext.	6-2 1899	6-2 1909	11000000	None				7	J. & D.	65129 17	65129 17
Total			55796000	20737000	117000	None	20120000			954840 56	954840 56
COLLATERAL TRUST BONDS:											
5% 5% Coll Trust	2-1 1906	2-1 1911	5000000	5000000			5000000	5	J & J	249 99999	249 99999
PLAIN BONDS, DEBENTURES, AND NOTES:											
INCOME BONDS:											
MISCELLANEOUS OBLIGATIONS:											
TOTAL.			58796000	25737000	117000	None	25120000			1204840 55	1204840 55

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
A	4-1-09	10 years	10	14 Locos. 75 Box and 100 coal cars	See page 24
Am. Car and Foundry Co.	10-1-05	3	36	100 Steel cars.	

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS.				INTEREST.		
		PRINCIPAL.		INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
A.	1250000.00	6000000.00	6000000.00	1650000.00	1650000.00	75000.00	75000.00	5%
Am. Car and Foundry Co.	177000.00	478500.00	265625.40	91437.50	17743.56	10497.96	10497.96	4%
TOTAL,	1427000.00	6478500.00	6265625.40	1741437.50	1667743.56	85497.96	85497.96	

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds,	20237000	117000		20120000	9548405 6	9548405 6
Collateral Trust Bonds,	5000000			5000000	249999 99	249999 99
Plain Bonds, Debentures, and Notes.						
Income Bonds,						
Miscellaneous Obligations,						
Equipment Trust Obligations,	602656			602656	85473 36	85473 36
TOTAL,	25839656	117000	None	25722656	12133879 91	12133879 91

PURPOSE OF THE ISSUE.	TOTAL PAR VALUE ISSUED DURING THE YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING THE YEAR.	TOTAL PAR VALUE OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:					
Issued for Construction of New Properties:					
Issued for Additions and Betterments: First and Refunding Bonds. 2075000	219000	~~117000~~	2075000		In addition to bonds sold, 117,000.00 in cash in treasury
Issued for Purchase of Railway or Other Property: First and Refunding Bonds.			5944000	10340608	
Issued for Acquisition of Securities:					
Issued for Refundment of Securities: First and Refunding	1018000	~~2170985~~	3970000		
Issued for Reorganization:					
First Consolidated			5783000	4848300	
Assumed by Reorganizer Co.					
Merriam Jct. & Lea			950000	776746	
So. West. Ext.			636000	582000	
Pacific "			1982000	1709750	
TOTAL,	1344000	~~2170985~~	20237000	17736304	

RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT. TO RAILWAYS.	ASSIGNMENT. TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	10000000	10000000		63.06	158621	
Funded Debt—Page 27,	3589656	3589656		63.06	56903	
TOTAL,	3589656	3589656	None	63.06	56903	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1909.	
Cash,	454573.71	Receiver's Certificates,	
Bills Receivable,	21750	Loans and Bills Payable,	2500000.00
Due from Agents,	167920.27	Audited Vouchers and Accounts,	299131.51
Due from Solvent Companies and Individuals,	486325.91	Wages and Salaries,	156715.04
Traffic Balances due from other Companies,	131351.68	Traffic Balances due to other Companies,	11935.93
Other Cash Assets [Excluding "Materials and Supplies."].[1]	12596.71	Dividends not Called for,	
		Matured Interest Coupons Unpaid [Including Coupons Due July 1].	76940.25
		Rents due July 1	49879.66
		Miscellaneous, (Equipment Replacement Fund)	134193.94
		(Appropriations for renewals)	49300.00
TOTAL—CASH AND CURRENT ASSETS,	1215442.28	TOTAL—CURRENT LIABILITIES,	1584412.63
BALANCE—CURRENT LIABILITIES,	368970.35	BALANCE—CASH ASSETS,	
TOTAL,	1584412.63	TOTAL,	

[1] Materials and Supplies on hand, $ 363103.11

[See General Balance Sheet—Page 83.]

EXPENDITURES FOR ADDITIONS AND BETTERMENTS.

ACCOUNT.	EXPENDITURES DURING YEAR. CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS.	CHARGED TO INCOME.	TOTAL.
1. Right of Way and Station Grounds,	39874			
2. Real Estate,	18154 27			
3. Widening Cuts and Fills,	4249			
4. Protection of Banks,	6697			
5. Grade Revisions and Changes of Line,	562089			
6. Tunnel Improvements,				
7. Bridges, Trestles, and Culverts,	204864			
8. Increased Weight of Rail,	156847			
9. Ballast,	544610			
10. Additional Main Tracks,				
11. Sidings and Spur Tracks,	1524534			
12. Terminal Yards,				
13. Fencing Right of Way,	112404			
14. Improvement of Over and Under Grade Crossings,				
15. Track Elevation, Elimination of Grade Crossings, etc.,				
16. Interlocking Apparatus,				
17. Block and Other Signal Apparatus,	9484			
18. Telegraph and Telephone Lines,				
19. Station Buildings and Fixtures,	207380			
20. Shops, Enginehouses, and Turntables,	22935			
21. Shop Machinery and Tools,	314694 41			
22. Water and Fuel Stations,	24161 7			
23. Grain Elevators and Storage Warehouses,				
24. Dock and Wharf Property,				
25. Electric Light and Power Plants,				
26. Electric-Power Transmission,				
27. Gas-Producing Plants,				
28. Snow and Sand Fences and Snow Sheds,				
29. Miscellaneous Structures,	17863 7			
30. Reconstruction of Road Purchased,				
31. Equipment,	2594699			
32. Interest and Commission,	518175 00			
TOTAL—ENTIRE LINE,	9344 to 8 47			
TOTAL—STATE OF Minnesota	4670683 5			4670683 5

EXPENDITURES FOR ROAD.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.]		TOTAL COST TO JUNE 30, 1908.	TOTAL COST TO JUNE 30, 1909.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
I. ROAD:						
1. Engineering,			206659			
2. Right of Way and Station Grounds,			388242			
3. Real Estate,			181627			
4. Grading,			5144560			
5. Tunnels,			6697			
6. Bridges, Trestles, and Culverts,			998324			
7. Ties,			465145			
8. Rails,			444983			
9. Frogs and Switches,			180300			
10. Track Fastenings and Other Material,			276753			
11. Ballast,			5178666			
12. Track Laying and Surfacing,			2023397			
13. Roadway Tools,			1964			
14. Fencing Right of Way,			156648			
15. Crossings and Signs,			44781			
16. Interlocking and Other Signal Apparatus,			9284			
17. Telegraph and Telephone Lines,						
18. Station Buildings and Fixtures,			378674			
19. General Office Buildings and Fixtures,						
20. Shops, Enginehouses, and Turntables,			87810			
21. Shop Machinery and Tools,			914590			
22. Water Stations,			258606			
23. Fuel Stations,						
24. Grain Elevators,						
25. Storage Warehouses,						
26. Dock and Wharf Property,						
27. Electric-Light Plants,						
28. ~~Electric~~-Power Plants,						
29. Electric-Power Transmission,						
30. Gas-Producing Plants,						
31. Miscellaneous Structures,			179422			
32. Transportation of Men and Material,						
33. Rent of Equipment,						
34. Repairs of Equipment,						
35. Earnings and Operating Expenses during Construction,						
35½. Injuries to Persons,						
36. Cost of Road Purchased,						
TOTAL,			15676648		290620354	306297002

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO CAPITAL.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR. CHARGED TO SPECIAL FUNDS OR INCOME.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. (See page 33.) CHARGED TO CAPITAL.	EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. (See page 33.) CHARGED TO SPECIAL FUNDS OR INCOME.	TOTAL COST TO JUNE 30, 1908.	TOTAL COST TO JUNE 30, 1909.
II. EQUIPMENT:						
37. Steam Locomotives,			1783216			
38. Electric Locomotives,						
39. Passenger-Train Cars,			1325194			
40. Freight-Train Cars,			2336778			
41. Work Equipment,			1561			
42. Floating Equipment,						
TOTAL,			5946699		17781256 60	153759759
III. GENERAL EXPENDITURES:						
43. Law Expenses,						
44. Stationery and Printing,						
45. Insurance,						
45. Taxes,						
47. Interest and Commissions,			518175 00			
48. Other Expenditures,						
TOTAL,			518175 00			518175 00
RECAPITULATION.						
I. ROAD,			10676648		28042025 54	29218792 07
II. EQUIPMENT,			5946699		17781256 60	153759759
III. GENERAL EXPENDITURES,			518175 00			518175 00
TOTAL—ENTIRE LINE,			63465847			
TOTAL—STATE OF Minnesota			4706835		17998486 04	18462554 39
Cost of Road per Mile of Line,					45997 985	46227 88
Cost of Equipment per Mile of Line,					29222 16	24326 7
General Expenditures per Mile of Line,						819 83
TOTAL PER MILE OF LINE,					47 06781	47484 39
Total per Mile of Line—State of Minnesota					47430 59	48834 86

Corrections made by P.P. Wm. Comm. on original report

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

OPERATING INCOME:				
Rail Operations:				
Operating Revenues—Page 45,	41713517			
Operating Expenses—Page 65, (or 65A),	28456608			
NET OPERATING REVENUE,			13256909	
NET OPERATING DEFICIT,				
Outside Operations—Page 67, A:				
Revenues,	675449			
Expenses,	103627			
NET REVENUE,				
NET DEFICIT,			41078	
TOTAL NET REVENUE,			13256909 31	
TOTAL NET DEFICIT,				
Taxes Accrued—Page 81, A,			14744414	
OPERATING INCOME.				18287417
OPERATING LOSS,				
OTHER INCOME:				
Rents Accrued from Lease of Road—Page 71,			700000	
Other Rents—Credits:				
(a) Hire of Equipment—Balance—Page 81,				
(b) Joint Facilities—Page 69,	16201030			
(c) Miscellaneous Rents—Page 71,	205773			
			16771553	
				16771553
Separately Operated Properties—Profit—Page 75,				
Dividends Declared on Stocks Owned or Controlled—Pages 49 and 57,	1143999			
Interest Accrued on Funded Debt Owned or Controlled—Pages 53 and 57,	3669377			4083776
Interest on Other Securities, Loans, and Accounts,			1009051	
Miscellaneous Income—Page 71,			2097	
TOTAL OTHER INCOME,				16161148
Gross Corporate Income carried forward,				13928894
Gross Corporate Loss carried forward,				

INCOME ACCOUNT—CONCLUDED

[FOR COMPANIES MAKING OPERATING REPORTS.]

Gross Corporate Income brought forward,										1998828	94	
Gross Corporate Loss brought forward,												
DEDUCTIONS FROM GROSS CORPORATE INCOME:												
Rents Accrued for Lease of Other Roads—Page 75,						20	77	10	00			
Other Rents—Debits:												
(a) Hire of Equipment—Balance—Page 79,			1	27	90	1						
(b) Joint Facilities—Page 73,		7	68	89	48							
(c) Miscellaneous Rents—Page 75,						78	16	8	49			
Separately Operated Properties—Loss—Page 75,												
Interest Accrued on Funded Debt—Page 27,						121	93	87	91			
Other Interest,						2	61	1	22			
Sinking Funds Chargeable to Income,												
Other Deductions—Page 75,												
TOTAL DEDUCTIONS FROM GROSS CORPORATE INCOME,										1496777	62	
NET CORPORATE INCOME,												
NET CORPORATE LOSS,										9878	68	
DISPOSITION OF NET CORPORATE INCOME:												
Dividends Declared:												
(a) On Preferred Stock—Page 21:												
4 per cent payable		1	98	17	00							
per cent payable												
per cent payable												
per cent payable												
TOTAL,						198	17	00				
(b) On Common Stock—Page 21:												
per cent payable												
per cent payable												
per cent payable												
per cent payable												
TOTAL,										198	17	00
(c) On Other Securities—Page 21:												
per cent payable												
Additions and Betterments Charged to Income—Page 33,												
Appropriations to Reserves,												
Miscellaneous:												
BALANCE FOR YEAR CARRIED FORWARD												

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
Balance June 30, 1908, Balance for year brought forward from Income Account, Other Properties—Loss—Page 67, B.	296,958.68	Balance June 30, 1908, Balance for year brought forward from Income Account, Other Properties—Profit—Page 67, B,	1387,749.67
Deductions for Year: Depreciation prior to July 1st 1907 on equipment taken out of service during the year	79,504.44	Additions for Year: Net Earnings from operation D.M. & Ft. D. R.R.	17,576.75
Judgement Granted B.F. Coal & Ry Co.	9,246.33	Net Earnings from operation M.M. & D. Ry.	103,956.87
Dividends Declared out of Surplus: (a) On Preferred Stock—Page 21 per cent payable per cent payable (b) On Common Stock—Page 21 per cent payable per cent payable (c) On Other Securities—Page 21 per cent payable			
Balance Credit, June 30, 1909, carried to Balance Sheet—Page 85.	1,124,523.84	Balance Debit, June 30, 1909, carried to Balance Sheet—Page 83,	
	1,504,783.79		1,504,783.79

Operating revenues from interstate business accruing to the State of Minnesota divided on straight mileage basis, see note 2, page 44.

OPERATING REVENUES.
STATE OF MINNESOTA.

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,	48999074	3676197	45322937
2. Passenger Revenue,	20770148	534224	20716724
3. Excess Baggage Revenue,	90654	—	90654
4. Parlor and Chair Car Revenue,			
5. Mail Revenue,			
6. Express Revenue,			
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			2080778
9. Switching Revenue,			
10. Special Service Train Revenue,			
11. Miscellaneous Transportation Revenue,			
TOTAL REVENUE FROM TRANSPORTATION,			65895810
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			
13. Parcel-Room Receipts,			
14. Storage—Freight,			
15. Storage—Baggage,			
16. Car Service,			
17. Telegraph Service,			
18. Rents of Buildings and other Property,			
19. Miscellaneous,			
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			
20 Joint Facilities Revenue Dr.			
21 Joint Facilities Revenue Cr.			
TOTAL OPERATING REVENUES,			65895815
TOTAL OPERATING REVENUES, Pages 45 and 45a.			182104573 24800388

Operating revenues from business originating and terminating in the State of Minnesota, see note 1, page 44.

OPERATING REVENUES—STATE OF Minnesota

[FOR COMPANIES MAKING OPERATING REPORTS.]

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			16356209 3
2. Passenger Revenue,			4487976 3
3. Excess Baggage Revenue,			62158 4
4. Parlor and Chair Car Revenue,			
5. Mail Revenue,			566470 5
6. Express Revenue,			517986 5
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger-Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts Nos. 2 to 8),			5379591 7
9. Switching Revenue,	(No entries required in this column for 1909.)	(No entries required in this column for 1909.)	312952 2
10. Special Service Train Revenue,			14750
11. Miscellaneous Transportation Revenue,			141040
TOTAL REVENUE FROM TRANSPORTATION (Accounts Nos. 1 to 11),			18014792 7
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			73220 7
13. Parcel-Room Receipts,			
14. Storage—Freight,			13834
15. Storage—Baggage,			4458 7
16. Car Service,			69949 7
17. Telegraph and Telephone Service,			
18. Rents of Buildings and Other Property,			184741
19. Miscellaneous,			181640
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			1327878
20. Joint Facilities Revenue—Dr.,			
21. Joint Facilities Revenue—Cr.,			488973
TOTAL OPERATING REVENUES—STATE,			18213457 3
TOTAL OPERATING REVENUES—ENTIRE LINE,			41713151 7

BLURRED PAGES

RAILWAY STOCKS OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF STOCKS OWNED NOT HELD IN SINKING OR OTHER FUNDS.		DIVIDENDS DECLARED.		VALUATION OF STOCKS OWNED.
	UNPLEDGED.	PLEDGED.	RATE.	AMOUNT.	
Stocks of Respondent Corporation:					
Common	164100000			None	
Preferred	34100000		5%		
Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Minnesota Transfer Co.		900000	✓	None	
St. Paul Union Depot Co.	10360000		4%	414399	10360000
Railway Transfer Co of Mpls.		9995000	Shares	✓	
D M & St P R.R. Co.	6416782	~~3530000~~			~~6416782~~
Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
By P R & W N Comm					
TOTAL,	~~9434782~~	~~4936500000~~		414399	10360000 ~~17036782~~

RAILWAY FUNDED DEBT OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF FUNDED DEBT OWNED NOT HELD IN SINKING OR OTHER FUNDS.		INTEREST ACCRUED.		VALUATION OF FUNDED DEBT OWNED.
	UNPLEDGED.	PLEDGED.	RATE.	AMOUNT.	
Funded Debt of Respondent Corporation:					
First & Ref. Mort. Bonds	11700000		4%		11700000
Funded Debt of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Minnesota Transfer Ry Co	4700000	9500000	4½	669377	7500000
D.T.T. & F.L.S. R.R. - Second Mort. Bonds	514000000		5	3000000	514000000
Funded Debt of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
TOTAL,	~~67800000~~	9500000		3669377	706000000

BLURRED PAGES

OPERATING EXPENSES—ENTIRE LINE.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO A. (Per cent.)	RATIO B. (Per cent.)	
I. MAINTENANCE OF WAY AND STRUCTURES:				
1. Superintendence,	2588749	5.76	91	
2. Ballast,	2054655	.46	07	
3. Ties,	10527502	23.41	370	
4. Rails,	470855	1.0	07	
5. Other Track Material,	1476367	3.17	50	
6. Roadway and Track,	19485019	43.32	685	
7. Removal of Snow, Sand, and Ice,	2661536	5.92	94	
8. Tunnels,				
9. Bridges, Trestles, and Culverts,	4138721	9.20	145	
10. Over and Under Grade Crossings,	2285469	.51	08	
11. Grade Crossings, Fences, Cattle Guards, and Signs,	1457507	3.24	51	
12. Snow and Sand Fences and Snowsheds,	186365	.41	07	
13. Signals and Interlocking Plants,	163068	.36	06	
14. Telegraph and Telephone Lines,	348946	.78	12	
15. Electric Power Transmission,				
16. Buildings, Fixtures, and Grounds,	910516	2.02	32	
17. Docks and Wharves,				
18. Roadway Tools and Supplies,	389408	.85	13	
19. Injuries to Persons,	145003	.32	05	
20. Stationery and Printing,	58102	.13	02	
21. Other Expenses,	15887	.04	01	
Total of Accounts Nos. 1 to 21,	44976484	100.00	1581	
II. MAINTENANCE OF EQUIPMENT:				
24. Superintendence,	1425171	2.50	50	
25. Steam Locomotives—Repairs,	21789968	38.17	766	
26. Steam Locomotives—Renewals,	2130791	3.73	75	
27. Steam Locomotives—Depreciation,	1064918	1.86	35	
28. Electric Locomotives—Repairs,				
29. Electric Locomotives—Renewals,				
30. Electric Locomotives—Depreciation,				
31. Passenger-train Cars—Repairs,	6001563	10.51	211	
32. Passenger-train Cars—Renewals,	393500	.69	14	
33. Passenger-train Cars—Depreciation,	532193	.93	19	
34. Freight-train Cars—Repairs,	16448042	28.81	578	
35. Freight-train Cars—Renewals,	1956681	3.49	70	
36. Freight-train Cars—Depreciation,	2476815	4.34	87	
37. Electric Equipment of Cars—Repairs,				
38. Electric Equipment of Cars—Renewals,				
39. Electric Equipment of Cars—Depreciation,				
40. Floating Equipment—Repairs,				
41. Floating Equipment—Renewals,				
42. Floating Equipment—Depreciation,				
43. Work Equipment—Repairs,	969544	1.70	34	
44. Work Equipment—Renewals,	225172	.04	01	
45. Work Equipment—Depreciation,	1360142	2.4	05	
46. Shop Machinery and Tools,	1786203	3.13	45	
47. Power Plant Equipment,				
48. Injuries to Persons,	354046	.62	12	
49. Stationery and Printing,	113467	.20	04	
50. Other Expenses,	9876	.02	00	
Total of Accounts Nos. 24 to 50,	57090021	100.00	2006	

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

(FOR LARGE ROADS.)

ACCOUNT.	AMOUNT.	RATIO A. (Per cent.)	RATIO B. (Per cent.)	
III. TRAFFIC EXPENSES:				
53. Superintendence,	2981547	2434	[illegible]	10.8
54. Outside Agencies,	6860418	5601	[illegible]	2.41
55. Advertising,	509497	446	18	
56. Traffic Associations,	166847	138	[illegible]	.06
57. Fast Freight Lines,				
58. Industrial and Immigration Bureaus,	91147	08	00	
59. Stationery and Printing,	16945443	1384	[illegible]	.60
60. Other Expenses,	360000	29	01	
Total of Accounts Nos. 53 to 60.	13247966	10000	[illegible]	4.30
IV. TRANSPORTATION EXPENSES:				
61. Superintendence,	8218650	714	[illegible]	1.13
62. Dispatching Trains,	1317053	81	[illegible]	.43
63. Station Employees,	18741870	1547	[illegible]	6.59
64. Weighing and Car-Service Associations,	606738	40	[illegible]	.21
65. Coal and Ore Docks,				
66. Station Supplies and Expenses,	1576576	105	[illegible]	.55
67. Yardmasters and their Clerks,	8448824	562	[illegible]	2.90
68. Yard Conductors and Brakemen,	5906425	393	[illegible]	2.08
69. Yard Switch and Signal Tenders	3557455	23	[illegible]	1.22
70. Yard Supplies and Expenses,	59961	04	[illegible]	.02
71. Yard Enginemen,	3303677	220	[illegible]	1.16
72. Enginehouse Expenses—Yard,	1780169	118	[illegible]	.62
73. Fuel for Yard Locomotives,	4410181	294	[illegible]	1.55
74. Water for Yard Locomotives,	1080900	07	[illegible]	.04
75. Lubricants for Yard Locomotives,	167758	08	[illegible]	.04
76. Other Supplies for Yard Locomotives,	1326721	09	[illegible]	.05
79. Motormen,				
80. Road Enginemen,	17931656	1193	[illegible]	6.30
81. Enginehouse Expenses—Road,	5526720	368	[illegible]	1.94
82. Fuel for Road Locomotives,	39515299	2630	[illegible]	13.89
83. Water for Road Locomotives,	1345762	90	[illegible]	.47
84. Lubricants for Road Locomotives,	587638	39	[illegible]	.21
85. Other Supplies for Road Locomotives,	716864	48	[illegible]	.25
86. Operating Power Plants.				
87. Purchased Power.				
88. Road Trainmen,	18026021	1200	[illegible]	6.33
89. Train Supplies and Expenses,	7140731	475	[illegible]	2.51
90. Interlockers and Block and Other Signals—Operation,	591375	39	[illegible]	.21
91. Crossing Flagmen and Gatemen,	4379939	291	[illegible]	1.54
92. Drawbridge Operation,	15823	01	[illegible]	.01
93. Clearing Wrecks,	368953	25	[illegible]	.13
94. Telegraph and Telephone—Operation,	6717144	445	[illegible]	2.36
95. Operating Floating Equipment,	536367	36	[illegible]	.19
96. Express Service,				
97. Stationery and Printing,	11794480	785	[illegible]	4.15
98. Other Expenses,	77561	05	[illegible]	.03
99. Loss and Damage—Freight,	58912771	3921	[illegible]	2.07
100. Loss and Damage—Baggage,	21907	01	[illegible]	.01
101. Damage to Property,	13361844	889	[illegible]	4.71
102. Damage to Stock on Right of Way,	5990644	440	[illegible]	2.12
103. Injuries to Persons,	5378601	358	[illegible]	1.89
Total of Accounts Nos. 61 to 103 (excepting Nos. 77 and 78).	150274196	10000	[illegible]	52.81

BLURRED PAGES

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO A. (Per cent.)	RATIO B. (Per cent.)
V GENERAL EXPENSES:			
106. Salaries and Expenses of General Officers,	4676599	9358	168 1.64
107. Salaries and Expenses of Clerks and Attendants,	8675841	2561	129
108. General Office Supplies and Expenses,	635560	495	21
109. Law Expenses,	2506264	1746	88
110. Insurance,	1841179	1283	65
111. Relief Department Expenses,			
112. Pensions,			
113. Stationery and Printing,	612546	427	22
114. Other Expenses,	416759	290	15
Total of Accounts Nos. 106 to 114,	14354688	10000	504
TOTAL OPERATING EXPENSES, (Excluding "Joint-Facility" Accounts Nos. 22, 23, 51, 52, 77, 78, 104, 105, 115, and 116.)	27894893.55		

SUMMARY.

ACCOUNT.	ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:		
Total of Accounts Nos. 1 to 21,	44976484	
22. Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,	3548681	
23. Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,	209897	
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,		46279168
Ratio to Total Operating Expenses (per cent),*		16.77
MAINTENANCE OF EQUIPMENT:		
Total of Accounts Nos. 24 to 50,	57090021	
51. Maintaining Joint Equipment at Terminals—Dr.,	955989	
52. Maintaining Joint Equipment at Terminals—Cr.,	165233	
TOTAL—MAINTENANCE OF EQUIPMENT,		57780777
Ratio to Total Operating Expenses (per cent),*		20.73
TRAFFIC EXPENSES:		
Total of Accounts Nos. 53 to 60,	12247966	
TOTAL—TRAFFIC EXPENSES,		12247966
Ratio to Total Operating Expenses (per cent),*		4.390
TRANSPORTATION EXPENSES:		
Total of Accounts Nos. 61 to 103 (excepting Nos. 77 and 78),	150274196	
77. Operating Joint Yards and Terminals—Dr.,	671589	
78. Operating Joint Yards and Terminals—Cr.,	296478	
104. Operating Joint Tracks and Facilities—Dr.,	1487640	
105. Operating Joint Tracks and Facilities—Cr.,	1213594	
TOTAL—TRANSPORTATION EXPENSES,		154291853
Ratio to Total Operating Expenses (per cent),*		55.31
GENERAL EXPENSES.		
Total of Accounts Nos. 106 to 114,	14354688	
115. General Administration Joint Tracks, Yards, and Terminals—Dr.,	102761	
116. General Administration Joint Tracks, Yards, and Terminals—Cr.,	8105	
TOTAL—GENERAL EXPENSES,		14449344
Ratio to Total Operating Expenses (per cent),*		5.18
TOTAL OPERATING EXPENSES,		278456808
Ratio of Operating Expenses to Operating Revenues (per cent),*		68.72
OPERATING EXPENSES—STATE OF Minnesota		
I. Maintenance of Way and Structures,	2947853	
II. Maintenance of Equipment,	9647639	
III. Traffic Expenses,	779952	
IV. Transportation Expenses,	9857445	
V. General Expenses,	937013	
TOTAL OPERATING EXPENSES,		18170819.5
Ratio of Operating Expenses to Operating Revenues (per cent),*		73.06

* Two (2) decimal figures required.

RENTS RECEIVABLE.

1. FROM JOINT FACILITIES.

[FOR COMPANIES MAKING OPERATING REPORTS.]

FACILITY LEASED.	LOCATION.	NAME OF LESSEE.	AMOUNT.
JOINT TRACKS:			
Great Nor. Terminal	Minneapolis Minn	Nor. Pac. Ry.	18296
3rd Ave No. to 10th St.	" "	Mpls. St. P. & S. Ste. M. Ry Co.	839701
"	" "	"	1019273
10 Chords to Cedar	" "	C. G. W. Ry.	33750
Minneapolis to	Merriam Minn	Chi. St. P. M. & O. Ry.	316810
Savage "	Des Moines Iowa	C. R. I. & P. Ry.	3069894

JOINT YARDS AND TERMINALS:			
Lower Yards	Minneapolis Minn	Ry. Transfer Co.	1119949
Terminals	St. Paul Minn	Del. Lack. & W. R. R.	386628
"	" "	Ia. " Ry	386628
"	Des Moines Ia.	" " "	38501
		TOTAL,	16201030

RENTS RECEIVABLE—CONCLUDED.

2. FROM LEASE OF ROAD.

ROAD LEASED.	LOCATION.	NAME OF LESSEE.	AMOUNT.
Minneton Jct.	Tonka Bay, Minn	Mpls. & St Paul Sub. Ry Co.	2100 00
		TOTAL,	2100 00

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION.	NAME OF LESSEE.	AMOUNT.
House & Lot.	Minneapolis, Minn.	H. J. Nichols	205 23
		TOTAL,	205 23

MISCELLANEOUS INCOME.

SOURCE OF INCOME.	GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Unclaimed wages			7097
TOTAL,			7097

RENTS PAYABLE.

1. FOR JOINT FACILITIES.

[FOR COMPANIES MAKING OPERATING REPORTS.]

FACILITY LEASED.	LOCATION.	NAME OF LESSOR.	AMOUNT.
JOINT TRACKS:			
St Paul to Minneapolis		Nor. Pac. Ry	479469
Oakdale to Fort Dodge Ia.		Del. Cent. RR.	70224
Spencer to Ruthven Ia		C. M. & St P Ry	37504
JOINT YARDS AND TERMINALS:			
Terminals	St Paul Minn.	Nor. Pac. Ry	100687
Pass. Sta.	Minneapolis	Great Nor.	19174
Pass. Statue track	St Paul	St Paul Union Depot Co.	21000
Terminals	Des Moines	Des Moines Union Ry Co.	16757
"	St Paul Minn	St Paul Union Depot Co.	39135
"	Minn. Transfer	Minn Transfer Ry Co.	85951
		TOTAL,	768948

RENTS PAYABLE—CONCLUDED.

2. FOR LEASE OF ROAD.

ROAD LEASED.	GUARANTEED INTEREST ON BONDS.	GUARANTEED DIVIDENDS ON STOCK.	CASH.	TOTAL.
D M & H D R R Co.	15488000		2210500	17698500
M D & R Ry			2777500	2777500
			27788000	27788000
TOTAL,			4988000	20276000

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION.	NAME OF LESSOR.	AMOUNT.
	None		
		TOTAL,	

OTHER DEDUCTIONS FROM INCOME.

NATURE OF DEDUCTION.	AMOUNT.
None	
TOTAL,	

SEPARATELY OPERATED PROPERTIES.

[For companies making operating reports.]

NAME OF PROPERTY.	LOCATION.	PROFIT.	LOSS.
	None		
	NET TOTAL,		

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE. U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Minnesota				10304845				10304845
Iowa	3139569							3139569
South Dakota	798000							798000
TOTAL,	3937569			10304845				14242414

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE. U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
B M & St L R R.	2210000							2210000
M D & P Ry	2772000							2772000
TOTAL,	4982000							4982000

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	ASSETS.	JUNE 30, 1909. ITEM.	JUNE 30, 1909. TOTAL.	YEAR ENDING JUNE 30, 1909. INCREASE.	YEAR ENDING JUNE 30, 1909. DECREASE
	29062025534	Cost of Road—Page 35,		29218092024	15670648	
	1778172560	Cost of Equipment—Page 37,		1853759259	2594699	
		General Expenditures—37,		5181750	5181750	
	10360000	Stocks Owned—Pages 49, 51, and 57,		10360089	89	
	187900000	Funded Debt Owned—Pages 53, 55, and 57,		70600000		117300000
	662181	Other Permanent Investments,		662181		
		Lands Owned,				
	47816176	Advances to Proprietary Affiliated and Controlled Companies		50316170	2500001	
	9649407	Cash and Current Assets—Page 29,		12154428	2505021	
		OTHER ASSETS:				
		Equipment Trusts,		6736918	6736918	
	5415496	Materials and Supplies—Page 29,		3631016		1784480
		Sinking, Insurance, and Other Funds—Page 59,				
		Sundries,		1685093	1685093	
		Profit and Loss—Page 43,				
	3861748093	GRAND TOTAL,		39391492167	77401574	

COMPARATIVE GENERAL BALANCE SHEET—CONCLUDED.

JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	LIABILITIES.	JUNE 30, 1909. ITEM.	JUNE 30, 1909. TOTAL.	YEAR ENDING JUNE 30, 1900. INCREASE.	YEAR ENDING JUNE 30, 1900. DECREASE.
	10,000,000.00	Capital Stock—Page 21,		10,000,000.00		
	2,508,039.82	Funded Debt—Page 27,		2,583,965.40	809,961.58	
	1,649,238.09	Current Liabilities—Page 29,		1,554,417.53		64,812.26
	335,102.57	Accrued Interest on Funded Debt not yet payable,		609,080.46	273,977.89	
	1,150,378	Accrued taxes not yet payable		1,337,641.4	187,263.6	
	10,000,000	Dividend accrued not yet payable		10,000,000		
	1,387,741.67	Profit and Loss—Page 43,		1,124,573.84		263,167.83
	3861,748.93	GRAND TOTAL,		39,391,179.27	1,274,011.74	

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

ITEM.	COLUMN FOR NUMBER PASSENGERS. TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	1797889			
2. Number of Passengers Carried One Mile,	57948361			
3. Number of Passengers Carried One Mile per Mile of Road,	56423			
4. Average Distance Carried,* 32.25 miles,				
5. Total Passenger Revenue—Page 45,		1076984.44		
6. Average Amount Received from each Passenger,†			59980	
7. Average Receipts per Passenger per Mile,†			01859	
8. Total Passenger Service Train Revenue—Page 45,		1905049.20		
9. Passenger Service Train Revenue per Mile of Road,*		1855.69		
10. Passenger Service Train Revenue per Train-Mile,†			1 28499	
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	25287348			
12. Number of Tons Carried One Mile,	2600580711			
13. Number of Tons Carried One Mile per Mile of Road,	2532.11			
14. Average Distance Haul of One Ton,* 102.84 miles,				
15. Total Freight Revenue—Page 45,		2796605.69		
16. Average Amount Received for each Ton of Freight,†			1 10593	
17. Average Receipts per Ton per Mile,†			010775	
18. Freight Revenue per Mile of Road,*		2722.98		
19. Freight Revenue per Train-Mile,†			26 5447	
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		4171815.17		
21. Operating Revenues per Mile of Road,*		4061.49		
22. Operating Revenues per Train-Mile,†			1 79110	
23. Operating Expenses—Page 65 (or 65A),		2845606.08		
24. Operating Expenses per Mile of Road,*		2770.69		
25. Operating Expenses per Train-Mile,†			1 72186	
26. Net Operating Revenue (or Deficit)—Page 39,		1325709.09		
27. Net Operating Revenue (or Deficit) per Mile of Road,*		1290.80		
28. Average Number of Passengers per Car-Mile,	16			
29. Average Number of Passengers per Train-Mile,	43			
30. Average Number of Passenger Cars per Train-Mile,*	2.90			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	1620			
32. Average Number of Tons of Freight per Train-Mile,*	2375			
33. Average Number of Freight Cars per Train-Mile,*	2036			
34. Average Number of Loaded Cars per Train-Mile,*	1466			
35. Average Number of Empty Cars per Train-Mile,*	478			
36. Average Mileage Operated During Year,*	1027.04			

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE—CONCLUDED.

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	1150560	
38. Passenger Locomotive-Miles,	1738831	
39. Mixed Locomotive-Miles,	37589	
40. Special Locomotive-Miles,	146	
41. Switching Locomotive-Miles,	364705	
42. TOTAL REVENUE LOCOMOTIVE MILEAGE,		2791831
43. Nonrevenue Service Locomotive-Miles,		109629
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	16059680	
45. Empty,	5735571	
46. Caboose,	998946	
47. TOTAL FREIGHT CAR-MILES,		22785197
Passenger Car-Miles—		
48. Passenger,	2909943	
49. Sleeping, Parlor, and Observation,	827146	
50. Other Passenger-Train Cars,	1420178	
51. TOTAL PASSENGER CAR-MILES,		5157317
Special Car-Miles—		
52. Freight—loaded,	132	
53. Freight—empty,		
54. Caboose,		
55. Passenger,	14	
56. Sleeping, Parlor, and Observation,		
57. Other Passenger-Train Cars,		
58. TOTAL SPECIAL CAR-MILES,		146
59. TOTAL REVENUE CAR MILEAGE,		27942560
60. Nonrevenue Service Car-Miles,		1207193
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	~~1006519~~ ~~1057198~~	
62. Passenger Train-Miles,	1789974 ~~883274~~	
63. Mixed Train-Miles,	~~2673248~~	
64. Special Train-Miles,	146	
65. TOTAL REVENUE TRAIN MILEAGE,		2338907
66. Nonrevenue Service Train-Miles,		49827

TRAFFIC AND MILEAGE STATISTICS—STATE OF Minnesota

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	738024			
2. Number of Passengers Carried One Mile,	36002364			
3. Number of Passengers Carried One Mile per Mile of Road,	95239			
4. Average Distance Carried,* 49.45 miles,				
5. Total Passenger Revenue—Page 45,		6204487		
6. Average Amount Received from each Passenger,†			85	26
7. Average Receipts per Passenger per Mile,†			01	723
8. Total Passenger Service Train Revenue—Page 45,		738187	95	
9. Passenger Service Train Revenue per Mile of Road,*		19527	77	
10. Passenger Service Train Revenue per Train-Mile,†			1 15	879
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	1876924			
12. Number of Tons Carried One Mile,	188987229			
13. Number of Tons Carried One Mile per Mile of Road,	499940			
14. Average Distance Haul of One Ton,* 100.69 miles,				
15. Total Freight Revenue—Page 45,		16891530		
16. Average Amount Received for each Ton of Freight,†			89	996
17. Average Receipts per Ton per Mile,†			00	894
18. Freight Revenue per Mile of Road,*		44684	22	
19. Freight Revenue per Train-Mile,†			3 83	713
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		24803088		
21. Operating Revenues per Mile of Road,*		6561	30	
22. Operating Revenues per Train-Mile,†			20	1733
23. Operating Expenses—Page 65 (or 65A),		18139195		
24. Operating Expenses per Mile of Road,*		4799	61	
25. Operating Expenses per Train-Mile,†			14	7018
26. Net Operating Revenue (or Deficit)—Page 39,		6682293		
27. Net Operating Revenue (or Deficit) per Mile of Road,*		1767	69	
28. Average Number of Passengers per Car-Mile,	16			
29. Average Number of Passengers per Train-Mile,	56			
30. Average Number of Passenger Cars per Train-Mile,*	4.54			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	1668			
32. Average Number of Tons of Freight per Train-Mile,*	31743			
33. Average Number of Freight Cars per Train-Mile,*	2563			
34. Average Number of Loaded Cars per Train-Mile,*	1903			
35. Average Number of Empty Cars per Train-Mile,*	594			
36. Average Mileage Operated During Year,*	3780.2			

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—STATE OF Minnesota—CONCLUDED.

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	638422	
38. Passenger Locomotive-Miles,	637401	
39. Mixed Locomotive-Miles,		
40. Special Locomotive-Miles,		
41. Switching Locomotive-Miles,	250515	
42. TOTAL REVENUE LOCOMOTIVE MILEAGE,		1526484
43. Nonrevenue Service Locomotive-Miles,		27305
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	11329300	
45. Empty,	3537463	
46. Caboose,	395125	
47. TOTAL FREIGHT CAR-MILES,		15261888
Passenger Car-Miles—		
48. Passenger,	1701668	
49. Sleeping, Parlor, and Observation,	546534	
50. Other Passenger-Train Cars,	642685	
51. TOTAL PASSENGER CAR-MILES,		2890887
Special Car-Miles—		
52. Freight—loaded,	132	
53. Freight—empty,		
54. Caboose,		
55. Passenger,	24	
56. Sleeping, Parlor, and Observation.		
57. Other Passenger-Train Cars,		
58. TOTAL SPECIAL CAR-MILES,		146
59. TOTAL REVENUE CAR MILEAGE,		18152921
60. Nonrevenue Service Car-Miles,		
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	595372	
62. Passenger Train-Miles,	637036	
63. Mixed Train-Miles,		
64. Special Train-Miles,	146	
65. TOTAL REVENUE TRAIN MILEAGE,		1232554
66. Nonrevenue Service Train-Miles,		39930

FREIGHT TRAFFIC MOVEMENT—STATE OF Minnesota

[Page 100 follows.]

[COMPANY'S MATERIAL EXCLUDED.]

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

COMMODITY.		FREIGHT ORIGINATING ON THIS ROAD.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS.	TOTAL FREIGHT TONNAGE.	
		Whole Tons.	Whole Tons.	Whole Tons.	Per Cent.
Products of Agriculture.	Grain,	388195	50433	438628	2337
	Flour,	279546	2616	282161	1503
	Other Mill Products,	53478	1064	54482	290
	Hay,	1684	21	1705	09
	Tobacco,				
	Cotton,	47	410	457	02
	Fruit and Vegetables,	14987	16196	31183	166
	Other Products of Agriculture,		57	57	
	TOTAL,	737871	70597	808468	4307
Products of Animals.	Live Stock,	31607	553	32160	171
	Dressed Meats,	9535	7071	16606	89
	Other Packing-House Products,	7875	586	8461	45
	Poultry, Game, and Fish,	398	6	404	02
	Wool,	169	441	610	03
	Hides and Leather,	1601	555	2156	12
	Other Products of Animals,	4776	999	5775	31
	TOTAL,	55961	10316	66277	353
Products of Mines.	Anthracite Coal,	195	32757	32952	172
	Bituminous Coal,	54486	253018	307504	1377
	Coke,	60	2685	2745	14
	Ores,				
	Stone, Sand, and other like articles,	22134	4658	26792	143
	Other Products of Mines,	184	5374	5558	30
	TOTAL,	28059	297777	325831	1736
Products of Forests.	Lumber,	93121	66684	159805	851
	Other Products of Forests,	7151	4655	11806	63
	TOTAL,	100272	71339	171611	914
Manufactures.	Petroleum and other Oils,	1239	16685	17924	96
	Sugar,	1563	7920	9483	51
	Naval Stores,				
	Iron, Pig and Bloom,	3902	2726	6628	35
	Iron and Steel Rails,	303	125	428	02
	Other Castings and Machinery,	5517	6606	12123	65
	Bar and Sheet Metal,	1615	8067	9682	52
	Cement, Brick, and Lime,	87433	51117	138550	738
	Agricultural Implements,	3940	9845	13785	71
	Wagons, Carriages, Tools, etc.,	762	2643	3405	16
	Wines, Liquors, and Beers,	9303	9544	18847	100
	Household Goods and Furniture,	6289	5906	12195	65
	Other Manufactures,	7383	17892	24275	131
	TOTAL,	128739	138086	266825	1422
Merchandise,		88788	29845	118633	632
Miscellaneous: Other commodities not mentioned above,		51011	68373	119384	636
	TOTAL TONNAGE—STATE,	1190701	686223	1876924	10000
	TOTAL TONNAGE—ENTIRE LINE,	1717137	811611	2528748	

MILEAGE—ENTIRE LINE.

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	25990	37071			36722	2921	102704		14	102690
Miles of second track,	992					1407	2399			2399
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	8313	4991			4095	501	17900	456	489	17411
TOTAL MILEAGE OPERATED (ALL TRACKS).	35295	42062			40817	4829	123003	456	503	122500

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OR TERRITORY.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Minnesota	12207	25595				1011	38813			38813
Iowa	13783	7443			13762	1910	36898		14	36884
So Dakota		4033			22960		26993			26993
TOTAL MILEAGE OPERATED (SINGLE TRACK).	25990	37071			36722	2921	102704		14	102690

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OR TERRITORY.	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Minnesota	12207	25740		37947			37947	
Iowa	13783	7443		21226		14	21212	
So Dakota		4033		4033			4033	
TOTAL MILEAGE OWNED (SINGLE TRACK).	25990	37216		63206		14	63192	

MILEAGE—STATE OF Minnesota

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	13207	25595				1011	38813			38813
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	9593						9593		334	9259
TOTAL MILEAGE OPERATED (All Tracks).	21800	25595				1011	48406		334	48072

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL
	13207	25595				1011	38813			38813
TOTAL MILEAGE OPERATED (Single Track).										

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OF Minnesota	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	13207	25740		37947			37947	
TOTAL MILEAGE OWNED (Single Track).								

[Annual Report Form—State Commissions.]

Copy & abstract of

ANNUAL REPORT

OF

The Minneapolis and St. Louis Railroad Co.

TO THE

RAILROAD AND WAREHOUSE COMMISSION

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1908.

(Endorsed)

FILED

May 8th 1911

LOUISE B TROTT

Clerk

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION.		TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR.	
					IN TREASURY.	IN SINKING OR OTHER FUNDS.		RATE.	AMOUNT.
Capital Stock:									
Common,	60000	100.00	6,000,000.00	6,000,000.00	164,100.00		5,836,900.00	1	None
Preferred,	40000	100.00	4,000,000.00	4,000,000.00	39,100.00		3,960,900.00	5	198,045.00
TOTAL,	100000	100.00	10,000,000.00	10,000,000.00	203,200.00		9,796,800.00		198,045.00

PURPOSE OF THE ISSUE		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER OF SHARES OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,					
	Preferred,					
Issued for Construction of New Properties:	Common,					
	Preferred,					
Issued for Additions and Betterments:	Common,					
	Preferred,					
Issued for Purchase of Railway or Other Property:	Common,					
	Preferred,					
Issued for Acquisition of Securities:	Common,					
	Preferred,					
Issued for Reorganization:	Common,			60000	None	
	Preferred,			40000		
	TOTAL,			100000		

FUNDED DEBT.

CLASS OF BOND OR OBLIGATION.	TERM. Date of Issue.	TERM. Date of Maturity.	TOTAL PAR VALUE AUTHORIZED.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
MORTGAGE BONDS:											
Miles to Mr. Jct	1-1 1877	1-1 1907	$ 1,800,000.00	1,800,000.00			1,800,000.00	7	J & J		
Mer. to Azle	2-1 1877	2-1 1927	10,000,000.00	9,500,000.00			9,500,000.00	7	J & A	665,000.00	665,000.00
Az. East.	6-2 1879	6-1 1909	10,000,000.00	10,150,000.00			10,150,000.00	7	J & A	710,500.00	710,500.00
J.H. "	12-1 1880	12-1 1910	6,360,000.00	6,360,000.00			6,360,000.00	7	J & A	445,200.00	445,200.00
Jac. "	4-1 1881	4-1 1921	6,000,000.00	13,820,000.00			13,820,000.00	6	A & O	829,200.00	829,200.00
First Cons.	11-2 1894	11-1 1934	10,000,000.00	5,282,000.00			5,282,000.00	5	M & N	264,100.00	264,100.00
First & Ref.	3-1 1899	3-1 1949	25,000,000.00	10,750,000.00	1,250,000.00		9,500,000.00	4	M & S	380,000.00	380,000.00
Total			$ 79,160,000.00	79,012,800.00	1,250,000.00		77,762,800.00			3,093,900.00	3,093,900.00
PLAIN BONDS, DEBENTURES, AND NOTES:											
Gold Notes 5 yrs. 5%	2-1 1906	2-1 1911	5,000,000.00	5,000,000.00			5,000,000.00	5	J & J	250,000.00	250,000.00
COLLATERAL TRUST BONDS:											
INCOME BONDS:											
MISCELLANEOUS OBLIGATIONS:											
TOTAL.			$ 84,160,000.00	84,012,800.00	1,250,000.00		82,762,800.00			3,343,900.00	3,343,900.00

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Equipment Trust Notes	Sept 9. 1916	3 years	36	500 - 60,000 Capacity Box Cars	
"	Aug. 27. 1916	3 years	36	100 - 60000 " Stock Cars	

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS.				INTEREST.		
		PRINCIPAL.		INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
Equipment Trust Notes	None	1590000	None	104912	None	112076	112076	4%
"	None	478500	186948	31228	12219	10436	10436	4%
TOTAL,		2068500	186948	136140	12219	122512	122512	

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds,	200118000.00	1,744,000,000.00		18,771,800.00	909390.02	909390.02
Plain Bonds, Debentures, and Notes,	5.000,000.00			5,000,000.00	750000.00	750000.00
Collateral Trust Bonds,	✓					
Income Bonds,	✓					
Miscellaneous Obligations,	✓					
Equipment Trust Obligations,	1859			1859	15168.12	15168.12
TOTAL,	25,030,39	1,744,000,000		23,790,39	1174558.14	1174558.14

PURPOSE OF THE ISSUE.	TOTAL PAR VALUE ISSUED DURING THE YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING THE YEAR.	TOTAL PAR VALUE OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:					
Issued for Construction of New Properties:					
Issued for Additions and Betterments: First Mtg. Refunding Bonds 1856.000.00	21500000	✓		18560000	Due addition to bonds sold 1744.000.00 $38160.00 is remaining in Treasury of Company
Issued for Purchase of Railway or Other Property: First Mtg. Refunding Bonds 594.000.00				594000.00	
Issued for Acquisition of Securities:					
Issued for Refundment of Securities: First Mtg. Refunding Bonds 7947000.00	11700000	✓		7947000	
Issued for Reorganization:					
First Consolidated 5.782.000.00				5782000.00	1872.300.00
Assumed by Reorganized Co.					
Myles to Mer. Jct. 455.000.00				1800.00	455.000.00
Mer. Jct to Ark. 950.000.00				950000.00	776.746.00
South Extension 1015.000.00				1015.000.00	1015.000.00
Saw Mill Extension 636.000.00				636.000.00	582.000.00
Pacific Extension 1.382.088.80	3370000.00			1387.000.00	1709.258.00
TOTAL 11,770,000.00				17001800.00	17,300,746.45

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RECAPITULATION OF CAPITALIZATION.

ACCOUNT.	TOTAL PAR VALUE OUTSTANDING.	ASSIGNMENT TO RAILWAYS.	ASSIGNMENT TO OTHER PROPERTIES.	AMOUNT PER MILE OF LINE. [See Instructions.] MILES.	AMOUNT PER MILE OF LINE. [See Instructions.] AMOUNT.	REMARKS.
Capital Stock—Page 21,	100000000	100000000	✓	63206	1582178	
Funded Debt—Page 27,	25030394 87	25030394 87	✓	63206	396130	
TOTAL,	35030394 87	35030394 87		63206	554768.	

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
	✓	✓	✓	✓	✓	✓	
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1908.	
Cash,	3778349	Receiver's Certificates,	65000000
Bills Receivable,	1467841	Loans and Bills Payable.	16464026
Due from Agents,	9930260	Audited Vouchers and Accounts,	13332076
Due from Solvent Companies and Individuals,	5186998 63	Wages and Salaries,	8341074
Traffic Balances due from other Companies,	3899839	Traffic Balances due to other Companies,	1222078
Other Cash Assets [Excluding "Materials and Supplies."],[1]	787939	Dividends not Called for,	✓
		Matured Interest Coupons Unpaid [Including Coupons Due July 1],	446650
Interest on Bonds owned 87,00 26		Rents due July 1,	3239915
Prepaid Insurance 1693 68		Miscellaneous, See Page 28—	10078512
		Appropriation for Renewals	7921568
TOTAL—CASH AND CURRENT ASSETS,	57077600 7	TOTAL—CURRENT LIABILITIES,	161043170
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	
TOTAL,		TOTAL,	57077600 7

[1] Materials and Supplies on hand, $ 5411549.57

[See General Balance Sheet—Page 83.]

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Changes made by P.R. W.H. Lom to original report.

ADDITIONS AND BETTERMENTS EXPENDITURES.

ACCOUNT.	EXPENDITURES DURING YEAR.			TOTAL. [See pages 35 and 37.]
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS.	CHARGED TO INCOME.	
1. Right of Way and Station Grounds,	42600			
2. Real Estate,	1301156			
3. Widening Cuts and Fills,	1170626			
4. Protection of Banks,	✓			
5. Grade Revisions and Changes of Line,	2255882			
6. Tunnel Improvements,	✓			
7. Bridges, Trestles, and Culverts,	2809888			
8. Increased Weight of Rail,	52097			
9. Ballast,	8940019			
10. Additional Main Tracks,	✓			
11. Sidings and Spur Tracks,	1061067			
12. Terminal Yards,	6187			
13. Fencing Right of Way,	171564			
14. Improvement of Over and Under Grade Crossings,	413			
15. Track Elevation, Elimination of Grade Crossings, etc.,	✓			
16. Interlocking Apparatus,	✓			
17. Block and Other Signal Apparatus,	132140			
18. Telegraph and Telephone Lines,	✓			
19. Station Buildings and Fixtures,	334324			
20. Shops, Enginehouses, and Turntables,	1136929			
21. Shop Machinery and Tools,	1869349			
22. Water and Fuel Stations,	1158062			
23. Grain Elevators and Storage Warehouses,				
24. Dock and Wharf Property,				
25. Electric Light and Power Plants,				
26. Electric-Power Transmission,				
27. Gas-Producing Plants,				
28. Snow and Sand Fences and Snow Sheds,				
29. Miscellaneous Structures,	43899			
30. Reconstruction of Road Purchased,				
31. Steam Locomotives,				
32. Electric Locomotives,				
33. Passenger-Train Cars,	130277			
34. Freight-Train Cars,	411006			
35. Work Equipment,	1270836			
36. Floating Equipment,				
37. Interest, Discount, and Commission,				
TOTAL—ENTIRE LINE,	23557475			
TOTAL—STATE OF	2049780			

EXPENDITURES FOR ROAD.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR.		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 23.]		TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
1. ROAD:						
1. Engineering,			117319			
2. Right of Way and Station Grounds,			42600			
3. Real Estate,			1301155			
4. Grading,			3145004			
5. Tunnels,			✓			
6. Bridges, Trestles, and Culverts,			2793995			
7. Ties,			336227			
8. Rails,			389399			
9. Frogs and Switches,			98101			
10. Track Fastenings and Other Material,			465148			
11. Ballast,			6241838			
12. Track Laying and Surfacing,			2798780			
13. Roadway Tools,			✓			
14. Fencing Right of Way,			177420			
15. Crossings and Signs,			18766			
16. Interlocking and Other Signal Apparatus,			132440			
17. Telegraph and Telephone Lines,			✓			
18. Station Buildings and Fixtures,			3319009			
19. General Office Buildings and Fixtures,			✓			
20. Shops, Enginehouses, and Turntables,			1136929			
21. Shop Machinery and Tools,			1869349			
22. Water Stations,			712388			
23. Fuel Stations,			445674			
24. Grain Elevators,						
25. Storage Warehouses,						
26. Dock and Wharf Property,						
27. Electric-Light Plants,						
28. Electric-Power Plants,						
29. Electric-Power Transmission,						
30. Gas-Producing Plants,						
31. Miscellaneous Structures,			43899			
32. Transportation of Men and Material,						
33. Rent of Equipment,			456380			
34. Repairs of Equipment,						
35. Earnings and Operating Expenses during Construction,						
36. Cost of Road Purchased,						
TOTAL,			22232606		278396948	290620554

EXPENDITURES FOR EQUIPMENT, GENERAL EXPENDITURES, AND RECAPITULATION.

ACCOUNT.	EXPENDITURES FOR NEW LINES OR EXTENSIONS DURING YEAR		EXPENDITURES FOR ADDITIONS AND BETTERMENTS DURING YEAR. [See page 33.]		TOTAL COST TO JUNE 30, 1907.	TOTAL COST TO JUNE 30, 1908.
	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.	CHARGED TO CAPITAL.	CHARGED TO SPECIAL FUNDS OR INCOME.		
II. EQUIPMENT:						
37. Steam Locomotives,						
38. Electric Locomotives,						
39. Passenger-Train Cars,			130277			
40. Freight-Train Cars,			41006			
41. Work Equipment,			1270836			
42. Floating Equipment,						
TOTAL,			1324869		12648769 1	12781260
III. GENERAL EXPENDITURES:						
43. Law Expenses,						
44. Stationery and Printing,						
45. Insurance,						
46. Taxes,						
47. Interest and Commissions,						
48. Other Expenditures,						
TOTAL.						
RECAPITULATION.						
I. ROAD,			22232606		28839699 48	29062076 54
II. EQUIPMENT,			1324869		12648769 1	12781260
III. GENERAL EXPENDITURES,						
TOTAL—ENTIRE LINE,			4357475		3010452639	3034015114
TOTAL—STATE OF MINNESOTA			704978		1779356824	1799848604
Cost of Road per Mile of Line,					45675 08	45979 85
Cost of Equipment per Mile of Line,					2003 25	2027 16
General Expenditures per Mile of Line,						
TOTAL PER MILE OF LINE,					47678 33	48007 01
Total per Mile of Line—State of MINNESOTA					46890 57	47430 59

INCOME ACCOUNT.

[FOR COMPANIES MAKING OPERATING REPORTS.]

| | | |

INCOME ACCOUNT—CONTINUED.

[FOR COMPANIES MAKING OPERATING REPORTS.]

| | | |

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
Balance June 30, 1907, Balance for year brought forward from Income Account, Other Properties—Loss—Page 67, B,	899509	Balance June 30, 1907, Balance for year brought forward from Income Account, Other Properties—Profit—Page 67, B,	14787695 1
Deductions for Year: Depreciation prior to July 1. 1907 on Equipment taken out of service during year.	247316 8	Additions for Year: This amount represents Earnings on M.A.&P. R.R. same was erroneously included in report year End 6/30. Page 47 Unclaimed baggage	77491 37 81561
Dividends Declared out of Surplus: (a) On Preferred Stock—Page 21 per cent payable per cent payable (b) On Common Stock—Page 21 per cent payable per cent payable (c) On Other Securities—Page 21 per cent payable			
Balance Credit, June 30, 1908, carried to Balance Sheet—Page 85,	13877496 7	Balance Debit, June 30, 1908, carried to Balance Sheet—Page 83,	15020764 4
	15020764 4		

Operating revenues from business originating and terminating in the State of Minnesota, see note 1 page 44

OPERATING REVENUES—STATE OF MINNESOTA

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,	(No entries required in this column for 1908.)	(No entries required in this column for 1908.)	11581061 8
2. Passenger Revenue,			461 31380
3. Excess Baggage Revenue,			8 15167
4. Parlor and Chair Car Revenue,			44974
5. Mail Revenue,			524917 1
6. Express Revenue,			47 20353
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger-Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			5696 12 45
9. Switching Revenue,			258614 8
10. Special Service Train Revenue,			
11. Miscellaneous Transportation Revenue,			10269 4
			2688342
TOTAL REVENUE FROM TRANSPORTATION,			17546070 5
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			24140 0
13. Parcel-Room Receipts.			
14. Storage—Freight,			39321
15. Storage—Baggage,			3718
16. Car Service,			8574 88
17. Telegraph Service,			
18. Rents of Buildings and Other Property,			17049 8
19. Miscellaneous,			3887 7
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			138470 2
TOTAL OPERATING REVENUES—STATE,			17685407
TOTAL OPERATING REVENUES—ENTIRE LINE			38265160 7

Operating revenues from Interstate business accruing to the State of Minnesota divided on straight mileage basis, see note 2, page 44.

OPERATING REVENUES.
STATE OF MINNESOTA.

ACCOUNT.	TOTAL RECEIPTS.	TOTAL DEDUCTIONS.	TOTAL REVENUES.
I. REVENUE FROM TRANSPORTATION:			
1. Freight Revenue,			38049643
2. Passenger Revenue,			1464777
3. Excess Baggage Revenue,			258834
4. Parlor and Chair Car Revenue,			14280
5. Mail Revenue,			
6. Express Revenue,			
7. Milk Revenue (on Passenger Trains),			
8. Other Passenger Train Revenue,			
TOTAL PASSENGER SERVICE TRAIN REVENUE (Accounts 2 to 8),			1492891
9. Switching Revenue,			
10. Special Service Train Revenue,			
11. Miscellaneous Transportation Revenue,			
TOTAL REVENUE FROM TRANSPORTATION,			52970534
II. REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION:			
12. Station and Train Privileges,			
13. Parcel-Room Receipts,			
14. Storage—Freight,			
15. Storage—Baggage,			
16. Car Service,			
17. Telegraph Service,			
18. Rents of Buildings and Other Property,			
19. Miscellaneous,			
TOTAL REVENUE FROM OPERATIONS OTHER THAN TRANSPORTATION,			
TOTAL OPERATING REVENUES,			52970534
TOTAL OPERATING REVENUES, Pages 45 and 45a.			176845407 329815941

See Note Page 44

RAILWAY STOCKS OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF STOCKS OWNED NOT HELD IN SINKING OR OTHER FUNDS. UNPLEDGED.	PAR VALUE OF STOCKS OWNED NOT HELD IN SINKING OR OTHER FUNDS. PLEDGED.	RATE.	DIVIDENDS DECLARED.	VALUATION.
Stocks of Respondent Corporation:					
The Minneapolis and St Louis R.R. Co.					
Common	16410000	✓	5%	None	None
Preferred.	3910000	✓			
Stocks of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Minnesota Transfer Ry Co		700000			
St. Paul Union Depot Co	1036000		4%	41440 1	1036000 0
~~Ry. Transfer Co.~~		~~2995000~~	Changed according to report R.R.J. to original W.R.L. Comm		
~~Minn. St. P. & S.S.M. Ry Co~~		~~2995000~~			~~7462726~~
Stocks of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
TOTAL,	3068 6000	~~4836 50000~~ 700000		41440 1	~~7462726~~ 1036000 0

RAILWAY FUNDED DEBT OWNED.

I. ACTIVE CORPORATIONS.

NAME OF CORPORATION AND SECURITY.	PAR VALUE OF FUNDED DEBT OWNED NOT HELD IN SINKING OR OTHER FUNDS.		RATE.	INTEREST ACCRUED.	VALUATION.
	UNPLEDGED.	PLEDGED.			
Funded Debt of Respondent Corporation:					
The Minneapolis and St Louis R.R. Co	12400000		4		12400000
Funded Debt of Corporations whose Property forms a Part of the System of Respondent Corporation:					
Minnesota Transfer Ry Co.	5000000	9500000	4+5	698397	12900000
Des Moines and St. Dodge R.R. Co	5140000		5 *	3000000	5140000
Funded Debt of Corporations whose Property does not form a Part of the System of Respondent Corporation:					
TOTAL,	18040000	9500000		3698397	18790000

OPERATING EXPENSES—ENTIRE LINE.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
I. MAINTENANCE OF WAY AND STRUCTURES:			
Superintendence,	1958799	0424	0074
Ballast,	1100965	0024	0004
Ties,	13077826	2832	0494
Rails,	2575220	0056	0010
Other Track Material,	1711395	0371	0065
Roadway and Track,	18898746	4092	0713
Removal of Snow, Sand, and Ice,	5557185	0120	0021
Tunnels,	✓		
Bridges, Trestles, and Culverts,	3167931	0686	0119
Over and Under Grade Crossings,	229058	0050	0009
Grade Crossings, Fences, Cattle Guards, and Signs,	10102261	0219	0038
Snow and Sand Fences and Snow Sheds,	726558	0049	0008
Signals and Interlocking Plants,	1644335	0034	0006
Telegraph and Telephone Lines,	3347449	0072	0013
Electric Power Transmission,	✓		
Buildings, Fixtures, and Grounds,	16455122	0357	0062
Docks and Wharves,	✓		
Roadway Tools and Supplies,	4285449	0093	0016
Work Equipment—Repairs,	8408119	0182	0032
Work Equipment—Renewals,	262201	0006	0001
Work Equipment—Depreciation,	2684844	0058	0010
Injuries to Persons,	3064469	0066	0012
Stationery and Printing,	572271	0012	0002
Insurance,	6828991	0148	0026
Other Expenses,	65222	0001	0000
Total of Foregoing Accounts,	45956376	9952	1735
Maintaining Joint Tracks, Yards, and Other Facilities—Dr.,	2328658	0916	0160
Maintaining Joint Tracks, Yards, and Other Facilities—Cr.,	401052	0868	0152
TOTAL—MAINTENANCE OF WAY AND STRUCTURES,	46126082	10000	1743
II. MAINTENANCE OF EQUIPMENT:			
Superintendence,	1101839	0220	0042
Steam Locomotives—Repairs,	14739187	2936	0556
Steam Locomotives—Renewals,	✓		
Steam Locomotives—Depreciation,	2158926	0430	0081
Electric Locomotives—Repairs,	✓		
Electric Locomotives—Renewals,	✓		
Electric Locomotives—Depreciation,	✓		
Passenger-Train Cars—Repairs,	4662964	0929	0176
Passenger-Train Cars—Renewals,	45650	0009	0002
Passenger-Train Cars—Depreciation,	1056146	0211	0040
Freight-Train Cars—Repairs,	19241168	3833	0726
Freight-Train Cars—Renewals,	1128149	0225	0043
Freight-Train Cars—Depreciation,	5041110	1004	0190
Electric Equipment of Cars—Repairs,	✓		
Electric Equipment of Cars—Renewals,	✓		
Electric Equipment of Cars—Depreciation,	✓		
Floating Equipment—Repairs,	✓		
Floating Equipment—Renewals,	✓		
Floating Equipment—Depreciation,	✓		
Shop Machinery and Tools,	1085446	0216	0041
Power Plant Equipment,			
M. E. Expenses carried forward,	50260585	10013	1897

OPERATING EXPENSES—ENTIRE LINE—CONTINUED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
II. MAINTENANCE OF EQUIPMENT—Continued:			
Brought forward,	50260585	10013	1897
Injuries to Persons,	192674	0038	0007
Stationery and Printing,	87512	0017	0003
Insurance,	709376	0181	0035
Other Expenses,	12570	0002	0001
Total of Foregoing Accounts,	51462667	10251	1943
Maintaining Joint Equipment at Terminals—Dr.,	436729	0087	0017
Equipment Borrowed—Dr.,	1038164	0207	0041
Maintaining Joint Equipment at Terminals—Cr.,	229317	0045	0009
Equipment Loaned—Cr..	255848	0510	0097
TOTAL—MAINTENANCE OF EQUIPMENT,	50109896	10000	1895
III. TRAFFIC EXPENSES:			
Superintendence,	2664214	2388	0101
Outside Agencies,	6138590	5503	0232
Advertising,	673295	0604	0025
Traffic Associations,	167433	0150	0006
Fast Freight Lines,	✓		
Industrial and Immigration Bureaus,	42898	0038	0002
Stationery and Printing,	1467703	1316	0055
Insurance,	13456	0001	0000
Other Expenses.	✓		
TOTAL—TRAFFIC EXPENSES,	11155489	10000	0421
IV. TRANSPORTATION EXPENSES:			
Superintendence,	2744833	0154	0065
Dispatching Trains,	1059015	0079	0040
Station Employees,	18578392	1273	0700
Weighing and Car-Service Associations,	567680	0039	0022
Stockyards and Grain Elevators,	✓		
Coal and Ore Docks,	✓		
Station Supplies and Expenses,	1553138	0093	0051
Yardmasters and their Clerks,	764980	0053	0029
Yard Conductors and Brakemen,	5061173	0348	0191
Yard Switch and Signal Tenders,	245567	0017	0009
Yard Supplies and Expenses,	13280	0001	0000
Yard Enginemen,	2733318	0188	0103
Enginehouse Expenses—Yard,	1356372	0093	0051
Fuel for Yard Locomotives,	3813159	0262	0144
Water for Yard Locomotives,	170378	0012	0006
Lubricants for Yard Locomotives,	120937	0008	0005
Other Supplies for Yard Locomotives,	135730	0009	0005
Total of Last Fifteen Accounts	24855037	2396	1316
Operating Joint Yards and Terminals—Dr.,	7702856	0494	0272
Operating Joint Yards and Terminals—Cr.,	2658786	0838	0460
Total Station and Yard Expenses,	42716991	2708	1488
Motormen,			
Road Enginemen,	16454686	1131	0621
Enginehouse Expenses—Road,	5285697	0363	0200
Fuel for Road Locomotives,	36492784	2507	1377
Water for Road Locomotives,	1389557	0096	0052
Lubricants for Road Locomotives,	684700	0047	0026
Other Supplies for Road Locomotives,	681949	0047	0026
Transportation Expenses carried forward,	60988363	4191	2302

OPERATING EXPENSES—ENTIRE LINE—CONCLUDED.

[FOR LARGE ROADS.]

ACCOUNT.	AMOUNT.	RATIO TO GENERAL ACCOUNT. (PER CENT.)	RATIO TO TOTAL OPERATING EXPENSES. (PER CENT.)
IV. TRANSPORTATION EXPENSES—Continued: Brought forward,	609 833 63	41 91	230 2
Operating Power Plants,			
Purchased Power,	157 662 76	10 83	0595
Road Trainmen,	71 797 26	04 93	0271
Train Supplies and Expenses,	5 490 71	00 38	0021
Interlockers, Block and Other Signals—Operation,	3 828 59	00 26	0014
Crossing Flagmen and Gatemen,	1 333 91	00 09	0001
Drawbridge Operation,	4 178 47	00 29	0016
Clearing Wrecks,	5 025 78	00 35	0019
Telegraph and Telephone—Operation,	1 009 69	00 07	0004
Operating Floating Equipment,			
Express Service,	11 321 51	00 78	0043
Stationery and Printing,	3 515 50	00 24	0013
Insurance,	434 27	00 03	0002
Other Expenses,	37 234 77	02 56	0141
Loss and Damage—Freight,	494 47	00 03	0001
Loss and Damage—Baggage,	12 506 78	00 86	0047
Damage to Property,	5 331 80	00 37	0020
Damage to Stock on Right of Way,	10 840 77	07 46	0287
Injuries to Persons,			
Total of Last Twenty-six Accounts.	1 032 756 94	70 98	3897
Operating Joint Tracks—Dr.,	5 750 26	00 39	0022
Operating Joint Tracks—Cr.,	968 529	00 66	0037
Total Movement Expenses.	1 028 321 97	70 66	3882
TOTAL—TRANSPORTATION EXPENSES,	1 455 491 88	100 00	5496
V. GENERAL EXPENSES:			
Salaries and Expenses of General Officers,	45 644 99	3 86 4	0173
Salaries and Expenses of Clerks and Attendants,	34 531 01	2 97 3	0131
General Office Supplies and Expenses,	4 621 65	0 39 1	0017
Law Expenses,	24 503 76	2 07 5	0093
Insurance,	99 00	00 09	0000
Relief Department Expenses,			
Pensions,			
Stationery and Printing,	5 485 70	0 46 5	0021
Other Expenses,	2 717 47	0 23 0	0010
Total of Foregoing Accounts.	117 603 08	9 95 7	0444
General Administration Joint Tracks, Yards, and Terminals—Dr.,	509 30	00 43	0002
General Administration Joint Tracks, Yards, and Terminals—Cr.,			
TOTAL—GENERAL EXPENSES,	118 112 38	10 00 0	0446
RECAPITULATION OF EXPENSES:			
I. Maintenance of Way and Structures.	461 760 87	~~~~~	1743
II. Maintenance of Equipment,	501 995 95	~~~~~	1895
III. Traffic Expenses,	111 554 89	~~~~~	0421
IV. Transportation Expenses,	1 455 491 88	~~~~~	5496
V. General Expenses,	113 112 38	~~~~~	0446
TOTAL OPERATING EXPENSES,	2 643 915 97		10000
Ratio of Operating Expenses to Operating Revenues, 69.22 per cent.*			
OPERATING EXPENSES—STATE OF MINNESOTA			
I. Maintenance of Way and Structures,	248 565 85	~~~~~	1743
II. Maintenance of Equipment, *See Note Page 64*	270 226 03	~~~~~	1895
III. Traffic Expenses,	60 050 00	~~~~~	421
IV. Transportation Expenses,	789 491 88	~~~~~	5496
V. General Expenses,	63 579 89	~~~~~	446
TOTAL OPERATING EXPENSES,	1 475 913 05		10000
Ratio of Operating Expenses to Operating Revenues, 62.05 per cent.*			

* Two (2) decimal figures required.

RENTS RECEIVABLE.

1. FROM LEASE OF ROAD.

[For companies making operating reports.]

PROPERTY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
Manitou Jct. Minn	Tonka Bay Minn.	Minneapolis Bd of Park Suburban Rytes	50000	
TOTAL,			50000	50000

2. FROM JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
JOINT TRACKS:				
Great Northern Crossing	Minneapolis Minn	Nor. Pac R. R. Co.	28296	
3rd Ave. No. to 20th Ave So	" "		838396	
"	" "	M St P & S M Ry	1009980	
20th Ave So. to Cedar Ave	" "	C G W Rytes	30000	
Minneapolis Minn to	Merriam "	C Gr W R O	3167772	
Gowrie Iowa to	Des Moines Iowa	C R I & P Ry	3935824	9010267
JOINT YARDS AND TERMINALS:				
Lower Yards	Minneapolis Minn	Railway Transfer 6.67 Mytes	640764	
Terminal Facilities	Albert Lea "	Illinois Central Ry	386678	
"	" "	Iowa " "	386678	
"	Des Moines Iowa	" "	57601	1723842
TOTAL,				16248688

RENTS RECEIVABLE—CONTINUED.

3. MISCELLANEOUS RENTS.

DESCRIPTION OF PROPERTY.	LOCATION OF PROPERTY.	NAME OF LESSEE.	ITEM.	TOTAL.
House and Lot	1726 Kenwood Parkway Minneapolis Minn	H. L. Nichols	7519	
TOTAL,				7519

MISCELLANEOUS INCOME.

SOURCE OF INCOME.	GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Cash Discount			171899
Ry Transfer Co			688404
Changed by Prov'l Tax Comm			
TOTAL,			~~171899~~ 860303

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RENTS PAYABLE.

1. FOR LEASE OF ROAD.

NAME OF LESSOR.	LOCATION OF PROPERTY.	GUARANTEED INTEREST ON BONDS.	GUARANTEED DIVIDENDS ON STOCK.	CASH.	TOTAL.
C.M. and St.P. R.R.	Northwood to Des Moines Iowa	152880 00	✓	199701	1728501
M. St.P. and S.S.M. R.R.	Waterloo Iowa to Fonda " Conde to Ledyard "			103600	103600
TOTAL,				303201	1832001

2. FOR JOINT FACILITIES.

[For companies making operating reports.]

FACILITY LEASED.	LOCATION OF PROPERTY.	NAME OF LESSOR.	ITEM.	TOTAL.
JOINT TRACKS:	St Paul to Minneapolis	Northern Pacific Ry Co.	436315	
	Terra Cotta to Ft Dodge Ia	Ill. Central Ry.	189299	
	Spencer Ia to Northwood	C.M. & St P Ry	474873	
				5025487
JOINT YARDS AND TERMINALS:				
Terminal Facilities	St. Paul Minn.	Northern Pacific Ry Co.	116956 9	
Storage Tracks	" "	St Paul M. & O. Co	71000	
Passenger Station	Minneapolis Minn	St Northern Ry Co.	191748	
Frt. & Terminal Facilities	Des Moines Iowa	Des Moines Mo Ry Co	163649	
Terminals	St. Paul Minn.	St Paul Minneapolis & Co	181463	
"	Minnesota Jct. "	Minnesota Transfer Ry Co.	71037 3	
				2656800
TOTAL,				7682287

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	ASSETS.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
		Cost of Road—Page 35,		29062076 54	735574 75	
	30104576 39	Cost of Equipment—Page 37,		1778175 60		
		General Expenditures—37,				
	1036000 00	Stocks Owned—Pages 49, 51, and 57,		1036000 00		
	14570000 00	Funded Debt Owned—Pages 53, 55, and 57,		18790000 00	4220000 00	
	662181	Other Permanent Investments,		662181		
		Lands Owned,				
	6350527 22	Cash and Current Assets—Page 29,		5707760 07		642767 15
		OTHER ASSETS:				
		Equipment Trusts,				
	5361359 7	Materials and Supplies—Page 29,		6415495 21	641365	
		Sinking, Insurance, and Other Funds—Page 59,				
		Sundries,				
		Profit and Loss—Page 43,				
	38557461 39	GRAND TOTAL,		38578682 24	217715	

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COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	LIABILITIES.	JUNE 30, 1908. ITEM.	JUNE 30, 1908. TOTAL.	YEAR ENDING JUNE 30, 1908. INCREASE.	YEAR ENDING JUNE 30, 1908. DECREASE.
	10000000000	Capital Stock—Page 21,		10000000000		
	24843683312	Funded Debt—Page 27,		25030294837	18671170	
	1694207732	Current Liabilities—Page 29,		1610431170		8377562
	35292689	Accrued Interest on Funded Debt not yet payable, Due 1 July Oct 1 1908	3309275 91 1041666	33510257		1782032
	8787655	Accrued Taxes Not yet Payable		11500378	2712823	
	10000000	Dividend Accrued Not yet Payable		100000000		
	1478769 61	Profit and Loss—Page 43,		1387749677		9101984
	3855746139	GRAND TOTAL,		3855784254	21772115	

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	1261770			
2. Number of Passengers Carried One Mile,	55039457			
3. Number of Passengers Carried One Mile per Mile of Road,	54756			
4. Average Distance Carried,* miles,	43.62			
5. Total Passenger Revenue—Page 45,		1003377	16	
6. Average Amount Received from each Passenger,†			79	601
7. Average Receipts per Passenger per Mile,†			01	823
8. Total Passenger Service Train Revenue—Page 45,		1214246	50	
9. Passenger Service Train Revenue per Mile of Road,*		12079	8	
10. Passenger Service Train Revenue per Train-Mile,†			95	070
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	2284457			
12. Number of Tons Carried One Mile,	240435168			
13. Number of Tons Carried One Mile per Mile of Road,	23919			
14. Average Distance Haul of One Ton,* miles,	105.25			
15. Total Freight Revenue—Page 45,		2556133	78	
16. Average Amount Received for each Ton of Freight,†			1 11	849
17. Average Receipts per Ton per Mile,†			01	063
18. Freight Revenue per Mile of Road,*		25419	4	
19. Freight Revenue per Train-Mile,†			2 50	625
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		3826516	07	
21. Operating Revenues per Mile of Road,*		38067	6	
22. Operating Revenues per Train-Mile,†			1 72	335
23. Operating Expenses—Page 65 (or 65A),		2648918	72	
24. Operating Expenses per Mile of Road,*		26352	4	
25. Operating Expenses per Train-Mile,†			1 19	299
26. Net Operating Revenue (or Deficit)—Page 39,		1177597	15	
27. Net Operating Revenue (or Deficit) per Mile of Road,*		1171	52	
28. Average Number of Passengers per Car-Mile,	1.0			
29. Average Number of Passengers per Train-Mile,	43			
30. Average Number of Passenger Cars per Train-Mile,*	4.11			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	15.04			
32. Average Number of Tons of Freight per Train-Mile,*	188.25			
33. Average Number of Freight Cars per Train-Mile,*	21.02			
34. Average Number of Loaded Cars per Train-Mile,*	15.70			
35. Average Number of Empty Cars per Train-Mile,*	4.40			
36. Average Mileage Operated During Year,*	1005.19			

*Two (2) decimal figures required. †Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	1008445	
38. Passenger Locomotive-Miles	1217014	
39. Mixed Locomotive-Miles,	62018	
40. Special Locomotive-Miles,	854	
41. Switching Locomotive-Miles,	312962	
42. TOTAL IN REVENUE SERVICE,		2602293
43. Nonrevenue Service Locomotive-Miles,		101449
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	15986289	
45. Empty,	4476943	
46. Caboose,	933211	
47. TOTAL,		21396443
Passenger Car-Miles—		
48. Passenger,	2938903	
49. Sleeping, Parlor, and Observation,	804841	
50. Other Passenger-Train Cars,	1501868	
51. TOTAL,		5246612
Special Car-Miles—		
52. Freight—loaded, Will try and separate next year	7734	
53. Freight—empty,		
54. Caboose,	✓	
55. Passenger,		
56. Sleeping, Parlor, and Observation, Will try and separate next year	2452	
57. Other Passenger-Train Cars,		
58. TOTAL,		10186
59. TOTAL IN REVENUE SERVICE,		26652241
60. Nonrevenue Service Car-Miles	1512296	1512296
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	945190	
62. Passenger Train-Miles,	1200893	
63. Mixed Train-Miles,	74877	
64. Special Train-Miles,	1438	
65. TOTAL REVENUE TRAIN MILEAGE,		2220397
66. Nonrevenue Service Train-Miles,		65059

TRAFFIC AND MILEAGE STATISTICS—STATE OF MINNESOTA

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of Passengers Carried Earning Revenue,	768202			
2. Number of Passengers Carried One Mile,	35619259			
3. Number of Passengers Carried One Mile per Mile of Road,	91771			
4. Average Distance Carried,* miles,	4650			
5. Total Passenger Revenue—Page 45,		6077957		
6. Average Amount Received from each Passenger,†			791	19
7. Average Receipts per Passenger per Mile,†			01	706
8. Total Passenger Service Train Revenue—Page 45,		7188213	6	
9. Passenger Service Train Revenue per Mile of Road,*		18543	3	
10. Passenger Service Train Revenue per Train-Mile,†			114	235
FREIGHT TRAFFIC:				
11. Number of Tons Carried of Freight Earning Revenue—Page 97,	1739056			
12. Number of Tons Carried One Mile,	176063882			
13. Number of Tons Carried One Mile per Mile of Road,	453621			
14. Average Distance Haul of One Ton,* miles,	101 24			
15. Total Freight Revenue—Page 45,		15386026	1	
16. Average Amount Received for each Ton of Freight,†			88	473
17. Average Receipts per Ton per Mile,†			0	874
18. Freight Revenue per Mile of Road,*		39641	7	
19. Freight Revenue per Train-Mile,†			2 84	877
TOTAL TRAFFIC:				
20. Operating Revenues—Page 45,		22981594	1	
21. Operating Revenues per Mile of Road,*		5921	11	
22. Operating Revenues per Train-Mile,†			1 96	662
23. Operating Expenses—Page 65 (or 65A),		14259138	5	
24. Operating Expenses per Mile of Road,*		3678	80	
25. Operating Expenses per Train-Mile,†			1 22	021
26. Net Operating Revenue (or Deficit)—Page 39,		8722456	96	
27. Net Operating Revenue (or Deficit) per Mile of Road,*		2247	90	
28. Average Number of Passengers per Car-Mile,	11			
29. Average Number of Passengers per Train-Mile,	57			
30. Average Number of Passenger Cars per Train-Mile,*	478			
31. Average Number of Tons of Freight per Loaded Car-Mile,*	1518			
32. Average Number of Tons of Freight per Train-Mile,*	32599			
33. Average Number of Freight Cars per Train-Mile,*	2743			
34. Average Number of Loaded Cars per Train-Mile,*	2157			
35. Average Number of Empty Cars per Train-Mile,*	486			
36. Average Mileage Operated During Year,*	3881 3			

* Two (2) decimal figures required. † Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—STATE OF MINNESOTA—CONTINUED.

CLASSIFICATION.	ITEM.	TOTAL.
LOCOMOTIVE MILEAGE:		
REVENUE SERVICE—		
37. Freight Locomotive-Miles,	580916	
38. Passenger Locomotive-Miles	654637	
39. Mixed Locomotive-Miles,	✓	
40. Special Locomotive-Miles,	✓	
41. Switching Locomotive-Miles,	207350	
42. TOTAL IN REVENUE SERVICE,		1442903
43. Nonrevenue Service Locomotive-Miles,		49387
CAR MILEAGE:		
REVENUE SERVICE—		
Freight Car-Miles—		
44. Loaded,	11634180	
45. Empty,	2620227	
46. Caboose,	509706	
47. TOTAL,		14764112
Passenger Car-Miles—		
48. Passenger,	1697984	
49. Sleeping, Parlor, and Observation,	570499	
50. Other Passenger-Train Cars,	79006 3	
51. TOTAL,		3008546
Special Car-Miles—		
52. Freight—loaded, } None		
53. Freight—empty,		
54. Caboose,		
55. Passenger,		
56. Sleeping, Parlor, and Observation, } Mail, Express and Track Gear	1578	
57. Other Passenger-Train Cars,		
58. TOTAL,		1578
59. TOTAL IN REVENUE SERVICE,		17804186
60. Nonrevenue Service Car-Miles,		645260
TRAIN MILEAGE:		
REVENUE SERVICE—		
61. Freight Train-Miles,	539329	
62. Passenger Train-Miles,	628486	
63. Mixed Train-Miles,	✓	
64. Special Train-Miles,	764	
65. TOTAL REVENUE TRAIN MILEAGE,		1168579
66. Nonrevenue Service Train-Miles,		23285

FREIGHT TRAFFIC MOVEMENT—STATE OF Minnesota

[Page 100 follows.]

[COMPANY'S MATERIAL EXCLUDED]

[FOR COMPANIES (OTHER THAN SWITCHING AND TERMINAL) MAKING OPERATING REPORTS.]

	COMMODITY.	FREIGHT ORIGINATING ON THIS ROAD. DELIVERED TO CONSIGNEES. Whole Tons.	FREIGHT ORIGINATING ON THIS ROAD. DELIVERED TO OTHER CARRIERS. Whole Tons.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS. Whole Tons.	TOTAL FREIGHT TONNAGE. Whole Tons.	TOTAL FREIGHT TONNAGE. Per Cent.
Products of Agriculture.	Grain,		344404	46459	390863	2248
	Flour,		23987	5080	29067	1386
	Other Mill Products,		5348	837	6185	314
	Hay,		2967	81	2988	17
	Tobacco,					
	Cotton,		14	52	66	
	Fruit and Vegetables,		16455	1473	30928	178
	Other Products of Agriculture,			23	23	
	TOTAL,		653615	67005	720620	4143
Products of Animals.	Live Stock,		28307	1572	29879	172
	Dressed Meats,		6198	7530	13728	79
	Other Packing-House Products,		7547	428	7975	46
	Poultry, Game, and Fish,		297	80	377	02
	Wool,		172	294	466	03
	Hides and Leather,		136	237	373	02
	Other Products of Animals,		5202	951	6153	36
	TOTAL,		47859	11094	58951	339
Products of Mines.	Anthracite Coal,		338	30882	31220	180
	Bituminous Coal,		95144	300721	310235	1784
	Coke,		103	2366	2469	14
	Ores,					
	Stone, Sand, and other like articles,		10460	6215	17175	99
	Other Products of Mines,		172	5763	5935	34
	TOTAL,		21087	345987	367074	2111
Products of Forests.	Lumber,		93986	55378	149364	859
	Other Products of Forests,		10234	11069	21303	122
	TOTAL,		104220	66447	170667	981
Manufactures.	Petroleum and Other Oils,		3765	13224	16979	98
	Sugar,		2751	8055	10806	62
	Naval Stores,					
	Iron, Pig and Bloom,		4840	2767	7607	44
	Iron and Steel Rails,		1470	2084	3554	20
	Other Castings and Machinery,		6590	6323	12913	74
	Bar and Sheet Metal,		1141	5190	6331	36
	Cement, Brick, and Lime,		72273	26791	99064	570
	Agricultural Implements,		2096	7559	9655	56
	Wagons, Carriages, Tools, etc.,		184	2228	2412	14
	Wines, Liquors, and Beers,		9454	9299	18753	108
	Household Goods and Furniture,		5670	4328	9998	57
	Other Manufactures,		4502	17516	22018	127
	TOTAL,		114726	105364	220090	1266
Merchandise,			92356	75614	117960	678
Miscellaneous: Other commodities not mentioned above.			27753	55991	83744	487
TOTAL TONNAGE—STATE,			1061616	677440	1739056	10000
TOTAL TONNAGE—ENTIRE LINE,			1484216	800~~2~~211	2284457	

MILEAGE—ENTIRE LINE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	25990	37071		M. & O. 56732 S.M. & B. ~~13760~~ 22960	29221	1027014	91857		14	99769
Miles of second track,	992				396 1015	2399				992
Miles of third track,										
Miles of fourth track,				M. & O. 1667						
Miles of yard track and sidings,	8108	4776		S.M. & B. 2392	501	17444	1066		489	16455
TOTAL MILEAGE OPERATED (All Tracks).	35090	41847			40781	4829	122547	10253	503	117215

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Minnesota	12207	25596					37802			37802
Iowa	13783	7443			13762	1011	35999		14	34974
South Dakota		4033			22960	1910	28903	9187		26993
TOTAL MILEAGE OPERATED (Single Track).	25990	37071			36722	2921	102704	9187	14	99769

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Minnesota	12207	25595 145	Sioux Falls	37947			37802 145	
Iowa	13783	7443		21226		14	21212	
South Dakota	—	4033		4033			4033	
TOTAL MILEAGE OWNED (Single Track).	25990	37216		63206	✓	14	63047 145	

MILEAGE—STATE OF MINNESOTA

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	17707	16595				1011	38813			37802
Miles of second track,	992					1011	2003			992
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	6131	3444				440	10016		334	9241
TOTAL MILEAGE OPERATED (ALL TRACKS).	19330	29039				2462	50831		334	48035

B. MILEAGE OF LINE OPERATED—BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF Minnesota	LINE OWNED.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	17207	16595				1011	38813			37802
TOTAL MILEAGE OPERATED (SINGLE TRACK).	17207	16595				1011	38813			37802

C. MILEAGE OF LINE OWNED—BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF Minnesota	LINE OWNED.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	17707	16595		37802			37802	
TOTAL MILEAGE OWNED (SINGLE TRACK).	17707	16595		37802			37802	

TAXES AND ASSESSMENTS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Minnesota				1002765				1002765
Iowa	3100000							3100000
South Dakota	780000							780000
TOTAL,	3880000			1002765				13907765

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
D M & A R R	1800000							1800000
M & P Ry Co	1035000							1035000
TOTAL,	2835000							2835000

Grand Total [illegible]

Copy of abstract

ANNUAL REPORT

OF THE

The Minneapolis and St. Louis

Railroad Company

TO THE

Railroad and Warehouse Commission

OF THE

STATE OF MINNESOTA

FOR THE YEAR ENDING JUNE 30, 1907.

(Endorsed)

FILED

May 8th 1911

LOUISE B TROTT

Clerk

CAPITAL STOCK.

DESCRIPTION.		NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF SHARES.	TOTAL PAR VALUE AUTHORIZED.	TOTAL AMOUNT ISSUED AND OUTSTANDING.	DIVIDENDS DECLARED DURING YEAR.	
						RATE.	AMOUNT.
Capital Stock:	Common,	60000	100 00	6000000 00	6000000 00		None
	Preferred,	40000	100 00	4000000 00	4000000 00	5%	2000000
	TOTAL,	100000	100 00	10000000 00	10000000 00		2000000

MANNER OF PAYMENT FOR CAPITAL STOCK.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,					
	Preferred,					
Issued for Construction:	Common,					
	Preferred,					
Issued for Reorganization:	Common,			60000	None	
	Preferred,			40000		
Issued for						
	TOTAL,			100000	None	

FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME. DATE OF ISSUE.	TIME. WHEN DUE.	AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bond							%			
Mpls & Morrison	1-1-1877	1-1-1907	4550000 00	4550000 00	1179000 0	No Record	7	J & J	159250 2	159250 2
Morrison & Dak	3-1-1877	2-1-1927	11000000 00	11000000 00	9500000 0	"	7	J & D.	665000 00	665000 00
Dakota Extension	6-15-1879	6-1-1909	11000000 00	10160000 00	10150000 0	"	7	J. & D.	710500 0	710500 0
So West. Extension	12-1-1880	12-1-1910	6360000	6360000 0	6360000 0	"	7	J & D	445200 0	445200 0
Pacific Extension	4-1-1881	4-1-1924	60000000 00	13820000 0	13820000 0	"	6	A & O.	829200 0	829200 0
First Consolidated	11-2-1894	11-1-1934	10000000 00	5282000 00	5282000 00	4824300 0	5	M & N	264100 0	264100 0
First & Refunding	2-1-1894	2-1-1949	250000000 00	104130000 0	104130000 0	8438150 0	4	M & S	4074932 9	4074932 9
Gold Notes 5 year 5 %	2-1-1906	2-1-1911	50000000 0	50000000 0	50000000 0	4806250 0	5	J & J	2500000 0	2500000 0
TOTAL: Mortgage Bonds,			442910000 0	202830000 0	197959000 0	13262450 0			9525083 1	9525083 1
Miscellaneous Obligations,			50000000 0	50000000 0	50000000 0	4806250 0			2500000 0	2500000 0
Income Bonds,										
GRAND TOTAL,			492910000 0	252830000 0	247959000 0	18068700 0			12025083 1	12025083 1

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Equipment Trust Notes	Sept 19 1904	3 years	36	500 – 60.000# Capacity Box Cars	
" " "	Aug 27 1906	3 "	36	100 – 60000# " Stock Cars	

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
Equipment Trust Notes	None	15900000	13250011	1044912	87075	348300	348300	4%
Do	None	4781500	3453311	314228	226937	87300	87300	4%
TOTAL,		20681500	4778312	1359140	314012	435600	435600	4%

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds—Page 19,	202830000 0	197959000 0	9525083 1	9525083 1
Miscellaneous Obligations—Page 19,	50000000	50000000	2500000	2500000
Income Bonds—Page 19,				
Equipment Trust Obligations—Page 21,	2068150 0	477831 2	43560 0	43560 0
TOTAL,	254898150 0	248436831 2	12068643 1	12068643 1

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1907.	
Cash,	6390178 9	Receiver's Certificates,	
Bills Receivable,	182150	Loans and Bills Payable,	62000000
Due from Agents,	1509138 2	Audited Vouchers and Accounts,	2861580 7
Due from Solvent Companies and Individuals,	43157852 3	Wages and Salaries,	1562784 8
Net Traffic Balances due from other Companies,		Net Traffic Balances due to other Companies,	1280427 1
Other Cash Assets [Excluding "Materials and Supplies"].[1]	1242988 78	Dividends not Called for,	
Cent Trust Co. Trustee 4% 5% Gold Notes 1186774 15		Matured Interest Coupons Unpaid (including Coupons due July 1).	877637 5
" " Cash " " 44879 63		Rentals & Cost of Replacement fund	1784302 0
Interest on Bonds owned 10104 47		Miscellaneous,	379874 2
Expenses Prepaid & insurance 123053		#Appropriation for renewales	1995466 9
1242988 78			
TOTAL—CASH AND CURRENT ASSETS,	6350527 22	TOTAL—CURRENT LIABILITIES,	16942073 2
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	4656319 90
TOTAL,	6350527 22	TOTAL,	6350527 22

[1] Materials and Supplies on hand, $ 525135.99

[See General Balance Sheet—Page 49.]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT.	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT. TO RAILROADS.	APPORTIONMENT. TO OTHER PROPERTIES. [Page 11.]	AMOUNT PER MILE OF LINE. MILES.	AMOUNT PER MILE OF LINE. AMOUNT.	REMARKS.
Capital Stock—Page 17,	10000000000	10000000000	✓	631 41	15838	
Bonds—Page 19 ["Grand Total"],	24795900000	24795900000	✓	631 41	39271	
Equipment Trust Obligations—Page 21,	4778312	4778312	✓	631 41	76	
TOTAL,	34843683 12	34843683 12	✓	631 41	55185	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE. MILES.	AMOUNT PER MILE OF LINE. AMOUNT.
The Minneapolis & St Louis R R Co	10000000000	24843683 12	34843683 12	631 41	55184
Des Moines & Ft Dodge R R Co	5046 60000	3672 00000	8718 60000	1386 5	6288 2
Minnesota, Dakota and Pacific results omitted on account line under construction, Bonds and Stocks not fully issued.					
GRAND TOTAL,	15046 60000	28515 68312	43562 28312	7700 6	5666 9

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS.

ITEM.	EXPENDITURES DURING YEAR.				TOTAL COST TO JUNE 30, 1906.	TOTAL COST TO JUNE 30, 1907.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO SPECIAL FUNDS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.		
CONSTRUCTION:						
1. Engineering,				24825		
2. Right of Way and Station Grounds,				5165		
3. Real Estate,				370		
4. Grading,				1118285		
5. Tunnels,						
6. Bridges, Trestles, and Culverts,				724433		
7. Ties,				327946		
8. Rails,				4016488		
9. Track Fastenings,				2282762		
10. Frogs and Switches,				480699		
11. Ballast,				74978		
12. Track Laying and Surfacing,				459530		
13. Fencing Right of Way,				191879		
14. Crossings, Cattle Guards, and Signs,				540073		
15. Interlocking or Signal Apparatus,						
16. Telegraph Lines,				519186		
17. Station Buildings and Fixtures,				500699		
18. Shops, Roundhouses, and Turntables,				1229995		
19. Shop Machinery and Tools,				1280577		
20. Water Stations,				236648		
21. Fuel Stations,				12448		
22. Grain Elevators,						
23. Storage Warehouses,						
24. Docks and Wharves,						
25. Electric-Light Plants,						
26. Electric-Motive-Power Plants,						
27. Gas-Making Plants,						
28. Miscellaneous Structures,				233865		
29. Legal Expenses,						
30. Interest and Discount,				1592500		
31. General Expenses,						
TOTAL CONSTRUCTION,				15842506		

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS—CONTINUED.

ITEM.	EXPENDITURES DURING YEAR.				TOTAL COST TO JUNE 30, 1906.	TOTAL COST TO JUNE 30, 1907.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO SPECIAL FUNDS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.		
EQUIPMENT:						
1. Locomotives,						
2. Passenger Cars,				2737258		
3. Sleeping, Parlor, and Dining Cars,						
4. Baggage, Express, and Postal Cars,						
5. Combination Cars,						
6. Freight Cars, Stock Work				283680		
7. Other Cars of all classes,				648947		
8. Floating Equipment,						
9. Discount and Commission,						
TOTAL EQUIPMENT,				3102525		
TOTAL CONSTRUCTION—PAGE 27,				15842806		
GRAND TOTAL CONSTRUCTION, EQUIPMENT, ETC.,				18945031	299176260	30104576 39
Total Cost Construction, Equipment, Etc.—State of Minnesota.				1569765	17636592 69	17793563 24
Cost of Construction per mile of line,						
Cost of Equipment per mile of line,						
TOTAL COST PER MILE OF LINE,					46382 25	47678 33
TOTAL COST PER MILE OF LINE—MINNESOTA,					46476 91	46890 57

QUESTION.	ANSWER.	REMARKS.
1. Does the absence of any entry under the heading "Included in Operating Expenses" (page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. yes.	
2. Do the amounts entered under the heading "Included in Operating Expenses" (page 27 or 29) cover all expenditures for permanent improvements or betterments charged to Operating Expense Accounts?	2.	

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	41529539	
Less Operating Expenses—Page 45,	25585424 1	
INCOME FROM OPERATION,		15944115 6
DEFICIT,		
Dividends on Stocks Owned—Page 37,	606579	
Interest on Bonds Owned—Page 39,	6726072	
Miscellaneous Income—Page 41,.	3063408	
INCOME FROM OTHER SOURCES,		3796859
TOTAL INCOME,		19740801 5
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,	12068643 1	
Interest on Interest-bearing Current Liabilities, etc.,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	297784 75	
Taxes—Page 79, A,	1551245 8	
Permanent Improvements—Page 29,		
Other Deductions,		
TOTAL DEDUCTIONS FROM INCOME,		16597736 4
NET INCOME,		3143065 1
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,		
Dividends, 5% per cent, Preferred Stock—Page 17,	2000000 0	
Other Payments from Net Income,		
TOTAL,		2000000 0
Surplus from Operations of Year ending June 30, 1907,		1143065 1
Deficit from Operations of Year ending June 30, 1907,		
Surplus on June 30, 1906, [From "General Balance Sheet," 1906 Report.]		14824016 2
Deficit on June 30, 1906, [From "General Balance Sheet," 1906 Report.]		
Additions for Year,		
Deductions for Year,		1179386 2
SURPLUS ON JUNE 30, 1907, [For entry on "General Balance Sheet," Page 51.]		14787695 1
DEFICIT ON JUNE 30, 1907, [For entry on "General Balance Sheet," Page 49.]		

STOCKS OWNED.

A. RAILWAY STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
Minnesota Transfer Ry. Co.	700000		None	None
The Minneapolis & St Louis R.R. Co				
Common	16410000		None	None
Preferred	3910000	5%	195500	None
St Paul Union Depot Co	10360000	4%	411079	10360000
TOTAL,	31380000		606579	10360000

B. OTHER STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
None				
TOTAL,				
GRAND TOTAL—A AND B,	31380000		606579	10360000

EARNINGS FROM OPERATION—STATE OF MINNESOTA.

ITEM.	Gross Earnings from Business Originating and Terminating in State of Minnesota. See Note 1, Page 34.	Deductions Account of Repayments, &c.	ACTUAL EARNINGS.	Gross Earnings from Interstate Business Accruing to State of Minnesota Divided on Straight Mileage basis. See Note 2, Page 34.	Deductions Account of Repayments, &c.	ACTUAL EARNINGS.	Total Gross Earnings Including Local and Interstate Business Accruing to State of Minnesota.
PASSENGER:							
Passenger Revenue,	50907864			14469193			65367057
Less Repayments—							
Tickets Redeemed,		176121			50023		226144
Excess Fares Refunded,		14075			3998		18073
Other repayments,		74889			21271		96160
Total Deductions,		265085			75292		
TOTAL PASSENGER REVENUE, Less Mdse	66743673 / 1316993 / 65026680		50642779			14383901	65026680
Mail,			5201157				5201157
Express,			3941320				3941320
Extra Baggage and Storage,			1337194			379799	1716993
Other items, Meals Privileges			172584				172584
TOTAL PASSENGER EARNINGS,			61295034			14763700	76058734
FREIGHT:							
Freight Revenue,	134503539			40664085			175157624
Less Repayments—							
Overcharge to Shippers,							
Other repayments,		2820011			852356		3672367
Total Deductions,		2820011			852356		
TOTAL FREIGHT REVENUE,			131683528			39801729	171485257
Stock Yards,							
Elevators,							
Other items,							
TOTAL FREIGHT EARNINGS,			131683528			39801729	171485257
TOTAL PASSENGER AND FREIGHT EARNINGS,			192978562			54565429	247543991
OTHER EARNINGS FROM OPERATION:							
Switching Charges—Balance,							
Car Per Diem and Mileage—Balance,			9004790				9004790
Hire of Equipment—Balance,			958583				958583
Telegraph and Telephone Companies,							
Rents from Tracks, Yards, and Terminals—Page 41,			1337026				1337026
Rents not otherwise provided for,							
Other sources, Less Meals & Priv.	681224 / 172584 / 509340		509340				509340
TOTAL OTHER EARNINGS,			23842939				23842939
Total Gross Earnings from Operation—Minnesota,	(Local and Interstate)		216821501			54565429	271386930
Total Gross Earnings from Operation—Entire Line,							415295397

BONDS OWNED.

A. RAILWAY BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Minnesota Transfer Ry Co.	1420000 00	4 1/2	64146 2	1220000 0
The Minneapolis & St Louis RR Co	9080000 0	4%	308461 0	9080000 0
Des Moines & Ft Dodge RR Co	4270000 0	5%	300000	4270000 0
TOTAL,	14770000 0		672607 2	14570000 0

B. OTHER BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTFREST RECEIVED.	VALUATION.
TOTAL,				
GRAND TOTAL—A AND B,	14770000 0		672607 2	14570000 0

RENTALS RECEIVED.

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY USING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
Gt Nor Crossing	Minneapolis, Minn	Nor Pac Ry Co	28296	
3rd ave No. to 20th ave So	" "	" "	833448	
" " "	" "	M St P & S M Ry.	1203336	
20th ave So. to Cedar ave	" "	C G W Ry. Co	60000	
Minneapolis, Minn.	Merriam. Minn	C St P M & O Ry Co	3167772	
Lorraine Iowa	Des Moines Iowa	C R I & P. Ry	3262101	
TOTAL,				8554958
YARDS:				
Lower Yards	Minneapolis, Minn	Railway Transfer Co of Minneapolis	6594700	
Rent of Tracks 75	512.48			
Less Tracks Engs. (A 37) 9	565.48			
65	947.00			
TOTAL,				6594700
TERMINALS:				
Terminal Tracks	Albert Lea	Ill Cent. R.R.	1021275	
"	"	Iowa Central	461399	
"	Des Moines	" "	118400	
TOTAL,				1601074
		GRAND TOTAL RENTS RECEIVED, [For entry on page 15.]		16750727

MISCELLANEOUS INCOME.

ITEM.	GROSS INCOME.	EXPENSES.	NET MISCELLANEOUS INCOME.
Rental of Lands - Bldgs & Track			410386
Rental of News Stand - Mpls. Pass. Depot Minn.			24000
Cash Discount			240836
Material Premium			1755781
# Interest and Exchange			2246687
Dakota Construction Co - Interest on 5 yr. Gold Notes.			25000000
Railway Transfer Co.			956548
TOTAL,			30634208

ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	259,839.28
2. Renewals of Rails,	9,630.32
3. Renewals of Ties,	85,756.07
4. Repairs and Renewals of Bridges and Culverts,	33,855.04
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	15,901.56
6. Repairs and Renewals of Buildings and Fixtures,	32,092.42
7. Repairs and Renewals of Docks and Wharves,	✓
8. Repairs and Renewals of Telegraph,	2,475.83
9. Stationery and Printing,	569.18
10. Other Expenses,	1,248.89
TOTAL,	439,744.59
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	7,002.56
12. Repairs and Renewals of Locomotives,	142,195.90
13. Repairs and Renewals of Passenger Cars,	53,926.52
14. Repairs and Renewals of Freight Cars,	227,384.09
15. Repairs and Renewals of Work Cars,	12,413.63
16. Repairs and Renewals of Marine Equipment,	
17. Repairs and Renewals of Shop Machinery and Tools,	9,870.29
18. Stationery and Printing,	604.62
19. Other Expenses,	5,294.70
TOTAL,	458,692.32
CONDUCTING TRANSPORTATION:	
20. Superintendence,	42,779.08
21. Engine and Roundhouse Men,	203,815.21
22. Fuel for Locomotives,	342,243.76
23. Water Supply for Locomotives,	11,245.45
24. Oil, Tallow, and Waste for Locomotives,	8,032.42
25. Other Supplies for Locomotives,	4,293.65
26. Train Service,	141,878.74
27. Train Supplies and Expenses,	37,711.37
28. Switchmen, Flagmen, and Watchmen,	71,282.58
29. Telegraph Expenses,	40,350.50
30. Station Service,	138,142.83
31. Station Supplies,	13,061.11
32. Switching Charges—Balance,	4,289.14
33. Car Per Diem and Mileage—Balance,	
34. Hire of Equipment—Balance,	
Total carried forward,	1,059,125.84

OPERATING EXPENSES—CONTINUED.

ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	1059125884
35. Loss and Damage,	4920648
36. Injuries to Persons,	16583839
37. Clearing Wrecks,	498817
38. Operating Marine Equipment,	
39. Advertising,	652676
40. Outside Agencies,	5874872
41. Commissions,	
42. Stock Yards and Elevators,	
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	7352521
44. Rents of Buildings and other Property,	1567133
45. Stationery and Printing,	2224253
46. Other Expenses,	8706190
TOTAL,	1528831333
GENERAL EXPENSES:	
47. Salaries of General Officers,	520694
48. Salaries of Clerks and Attendants,	3331395
49. General Office Expenses and Supplies,	304297
50. Insurance,	1697496
51. Law Expenses,	734222
52. Stationery and Printing (General Offices),	575607
53. Other Expenses,	1278306
TOTAL,	13127417
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	43974459
55. Maintenance of Equipment,	45869232
56. Conducting Transportation,	1528831333
57. General Expenses,	13127417
GRAND TOTAL,	2558542141
PERCENTAGE OF EXPENSES TO EARNINGS—ENTIRE LINE,	61.61
OPERATING EXPENSES—STATE OF MINNESOTA,	
Maintenance of Way and Structures,	22904983
Maintenance of Equipment,	31266712
Conducting Transportation,	102449051
General Expenses,	8802176
TOTAL,	165422922
PERCENTAGE OF EXPENSES TO EARNINGS—MINNESOTA,	60.95

RENTALS PAID.

A. RENTS PAID FOR LEASE OF ROAD.

NAME OF ROAD.	INTEREST ON BONDS GUARANTEED.	DIVIDENDS ON STOCK GUARANTEED.	CASH.	TOTAL.
D M & Ft D RR Co	16288000		12241343	27529343
# M D & C RR			2249132	2249132
TOTAL RENTS—A, [For entry on page 41 (or 42).]	16288000		14490475	29778475

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY OWNING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
St Paul Minn to	Minneapolis, Minn	Northern Pacific Ry Co	4362126	
Iasa Iowa to	Ft Dodge Ia.	Ill Cent. RR Co	383225	
Spencer " "	Ruthven "	C M & St P Ry. Co.	339084	
TOTAL.				5084435
YARDS:				
None				
TOTAL.				
TERMINALS:				
Terminal Facilities	St Paul Minn.	Northern Pacific Ry Co	1139543	
Storage Tracks	St Paul Minn	St Paul Union Depot	210000	
Passenger Station	Minneapolis Minn	Gt. Nor Ry. Co.	191748	
Pass Terminal Facilities	Des Moines Ia.	Des M. Ubv. Ry. Co.	726795	
TOTAL,				2268086
		GRAND TOTAL RENTS—B, [For entry on page 43, item 43.]		7352521

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1906. ITEM.	JUNE 30, 1906. TOTAL.	ASSETS.	JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	YEAR ENDING JUNE 30, 1907. INCREASE.	YEAR ENDING JUNE 30, 1907. DECREASE.
		Cost of Road—Page 27,				
	299176208	Cost of Equipment—Page 29,		301045639	18695031	
	10000000	Stocks Owned—Page 37,		10360000	360000	
	9830000	Bonds Owned—Page 39,		14570000	4740000	
	627001	Other Permanent Investments,		662181	35180	
		Lands Owned				
	61657836	Cash and Current Assets—Page 23,		63505272	1850436	
		OTHER ASSETS:				
		Equipment Trusts,				
	3704064	Materials and Supplies,		5351357	1647295	
		Sinking Fund,				
		Sundries,				
		Profit and Loss—Page 31 (or 33),				
	373427861	GRAND TOTAL,		385574639	101467528	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1906. ITEM.	JUNE 30, 1906. TOTAL.	LIABILITIES.	JUNE 30, 1907. ITEM.	JUNE 30, 1907. TOTAL.	YEAR ENDING JUNE 30, 1907. INCREASE.	YEAR ENDING JUNE 30, 1907. DECREASE.
	10000000 00	Capital Stock—Page 17,		10000000 00		
	24631250 06	Funded Debt—Page 23,		24843683 12	212433 06	
	1028187 27	Current Liabilities—Page 23,		1694207 32	666020 05	
		Real Estate Mortgages,				
	211185 91	Accrued Interest on Funded Debt not yet payable,		352923 89	141739 98	
	897612 5	Accrued Taxes not yet payable		878755 5		18857 70
	1000000 00	Dividend Accrued, not yet payable		1000000 00		
	14824016 2	Profit and Loss—Page 31 (or 33),		14787695 1		36321 1
	37542786 11	GRAND TOTAL,		38557461 39	1014675 28	

TRAFFIC AND MILEAGE STATISTICS—STATE OF MINNESOTA.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	7859710			
2. Number of passengers carried one mile,	356083300			
3. Number of passengers carried one mile per mile of road,	91402			
4. Average distance carried,* miles,	4531			
5. Total passenger *revenue*—Page 35,		6502668	80	
6. Average amount received from each passenger,†			82	741
7. Average receipts per passenger per mile,†			01	826
8. Total passenger *earnings*—Page 35,		760587	34	
9. Passenger *earnings* per mile of road,*		19523	33	
10. Passenger *earnings* per train mile,†			1	17 20 6
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	1867891			
12. Number of tons carried one mile,	180245986			
13. Number of tons carried one mile per mile of road,	46267			
14. Average distance haul of one ton,* miles,	9650			
15. Total freight *revenue*—Page 35,		1714852	57	
16. Average amount received for each ton of freight.†			97	000
17. Average receipts per ton per mile,†			00	951
18. Total freight *earnings*—Page 35,		1714852	57	
19. Freight *earnings* per mile of road,*		44018	80	
20. Freight *earnings* per train mile,†			3	06 98 6
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		2713869	30	
22. Gross earnings from operation per mile of road,*		69661	4	
23. Gross earnings from operation per train mile,†			2	17 325
24. Operating expenses—Page 45,		1654229	22	
25. Operating expenses per mile of road,*		42461	9	
26. Operating expenses per train mile,†			1	32 470
27. Income from operation—Page 31,		1059640	08	
28. Income from operation per mile of road,*		27199	6	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	3297990			
30. Average number of passenger cars per train mile,*	4			
31. Average number of passengers per train mile,	52			
32. Mileage of loaded freight cars—North or East,	872136			
33. Mileage of loaded freight cars—South or West,	600367			
34. Mileage of empty freight cars—North or East,	150426			
35. Mileage of empty freight cars—South or West,	131407			
36. Average number of freight cars per train mile,*	26	03		
37. Average number of loaded cars per train mile,*	20	99		
38. Average number of empty cars per train mile,*	5	04		
39. Average number of tons of freight per train mile,*	322	67		
40. Average number of tons of freight per loaded car mile,*	15	37		
41. Average mileage operated during year,*	2895	58		
TRAIN MILEAGE:	Miles.	Miles.		
42. Mileage of revenue passenger trains,		690	1	51
43. Mileage of locomotives employed in "helping" passenger trains,	None			
44. Percentage of "helping" to revenue train mileage,* per cent,	None			
45. Mileage of revenue mixed trains,		None		
46. Mileage of revenue freight trains,		558	6	10
47. Mileage of locomotives employed in "helping" mixed and freight trains,	None			
48. Percentage of "helping" to revenue train mileage,* per cent,	None			
49. TOTAL REVENUE TRAIN MILEAGE,		1248	7	61
50. Mileage of nonrevenue trains,		30	7	96

*Two (2) decimal figures required. †Five (5) decimal figures required.

TRAFFIC AND MILEAGE STATISTICS—ENTIRE LINE.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	1114607			
2. Number of passengers carried one mile,	51064856			
3. Number of passengers carried one mile per mile of road,	58892			
4. Average distance carried,* miles,	45.81			
5. Total passenger *revenue*—Page 35,		9842149	1	
6. Average amount received from each passenger,†			88	302
7. Average receipts per passenger per mile,†			01	927
8. Total passenger *earnings*—Page 35,		1185085	27	
9. Passenger *earnings* per mile of road,*		13667	2	
10. Passenger *earnings* per train mile,†			104	362
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	24528600			
12. Number of tons carried one mile,	2388614010			
13. Number of tons carried one mile per mile of road,	275472			
14. Average distance haul of one ton,* miles,	97.38			
15. Total freight *revenue*—Page 35,		26813507	9	
16. Average amount received for each ton of freight,†			109	315
17. Average receipts per ton per mile,†			01	123
18. Total freight *earnings*—Page 35,		26813507	9	
19. Freight *earnings* per mile of road,*		309232		
20. Freight *earnings* per train mile,†			288	605
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		41529539	7	
22. Gross earnings from operation per mile of road,*		47894	8	
23. Gross earnings from operation per train mile,†			2	033
24. Operating expenses—Page 45,		25585424	1	
25. Operating expenses per mile of road,*		29506	9	
26. Operating expenses per train mile,†			1	258
27. Income from operation—Page 31,		15944115	6	
28. Income from operation per mile of road,*		18387	9	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	5146037			
30. Average number of passenger cars per train mile,*	4.53			
31. Average number of passengers per train mile,	45.—			
32. Mileage of loaded freight cars—North or East,	78277112			
33. Mileage of loaded freight cars—South or West,	83383944			
34. Mileage of empty freight cars—North or East,	21375555			
35. Mileage of empty freight cars—South or West,	18142288			
36. Average number of freight cars per train mile,*	21.65			
37. Average number of loaded cars per train mile,*	17.40			
38. Average number of empty cars per train mile,*	4.25			
39. Average number of tons of freight per train mile,*	257.10			
40. Average number of tons of freight per loaded car mile,*	14.78			
41. Average mileage operated during year,*	867.10			
TRAIN MILEAGE:	MILES.	MILES.		
42. Mileage of revenue passenger trains,		1113256		
43. Mileage of locomotives employed in "helping" passenger trains,	None	....	....	....
44. Percentage of "helping" to revenue train mileage,* per cent,	None	....	....	....
45. Mileage of revenue mixed trains,		22292		
46. Mileage of revenue freight trains,		906781		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	None	....	....	....
48. Percentage of "helping" to revenue train mileage,* per cent,	None	....	....	....
49. TOTAL REVENUE TRAIN MILEAGE.		2042329		
50. Mileage of nonrevenue trains,		94837		

*Two (2) decimal figures required. †Five (5) decimal figures required.

FREIGHT TRAFFIC MOVEMENT—STATE OF MINNESOTA.

[COMPANY'S MATERIAL EXCLUDED.]

COMMODITY.		FREIGHT ORIGINATING ON THIS ROAD.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS.	TOTAL FREIGHT TONNAGE.	
		WHOLE TONS.	WHOLE TONS.	WHOLE TONS.	PER CENT.
Products of Agriculture.	Grain,	365167	39460	404627	2166
	Flour,	242776	2005	244781	1311
	Other Mill Products,	37777	1272	39049	209
	Hay,	1603	141	1744	09
	Tobacco,				
	Cotton,		1152	1152	06
	Fruit and Vegetables,	14897	28906	43803	235
	Other Products of Agriculture,		54	54	
	TOTAL,	662220	72990	735210	3936
Products of Animals.	Live Stock,	32747	1148	33895	181
	Dressed Meats,	7505	11852	19357	104
	Other Packing-House Products,	5451	707	6158	33
	Poultry, Game, and Fish,	694	1503	2197	12
	Wool,	528	417	945	05
	Hides and Leather,	139	521	660	03
	Other Products of Animals,	5109	843	5952	32
	TOTAL,	52173	14991	69164	370
Products of Mines.	Anthracite Coal,	33	24199	24232	130
	Bituminous Coal,	9986	253072	263058	1408
	Coke,	158	4687	4845	26
	Ores,		934	934	05
	Stone, Sand, and other like articles,	9071	5847	14918	80
	Other Products of Mines,	160	5345	5505	29
	TOTAL,	19408	294084	313492	1678
Products of Forests.	Lumber,	122881	72653	195404	1046
	Other Products of Forests,	24349	9303	33652	180
	TOTAL,	147230	81856	229086	1226
Manufactures.	Petroleum and other Oils,	6482	16401	22883	123
	Sugar,	3615	10235	13850	74
	Naval Stores,				
	Iron, Pig and Bloom,	6797	6826	13623	73
	Iron and Steel Rails,	83	15421	15504	83
	Other Castings and Machinery,	8783	14634	23417	125
	Bar and Sheet Metal,	1858	8860	10718	57
	Cement, Brick, and Lime,	80372	34516	114888	615
	Agricultural Implements,	1815	8052	9867	53
	Wagons, Carriages, Tools, etc.,	357	3485	3842	21
	Wines, Liquors, and Beers,	6732	9376	16108	86
	Household Goods and Furniture,	6302	7553	13855	74
	Other Manufactures,	840	13234	14074	76
	TOTAL,	124036	148593	272629	1460
Merchandise,		117656	38652	156308	837
Miscellaneous: Other commodities not mentioned above,		37752	54250	92002	493
TOTAL TONNAGE—MINNESOTA,		1160475	707416	1867891	10000
TOTAL TONNAGE—ENTIRE LINE,		1635603	817257	2452860	

MILEAGE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	259.90	371.51			137.62	29.21	935.97	137.73	14	906.62
Miles of second track,	9.92					13.91	23.99			9.92
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	82.97	47.59			12.62	5.01	169.01	6.01	4.93	159.07
TOTAL MILEAGE OPERATED (All Tracks).	352.79	419.10			171.06	48.29	1128.97	143.74	5.07	1075.61

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Minnesota	122.07	257.40				10.11	389.58			379.47
Iowa	137.83	74.43			137.62	19.10	368.98		14	349.74
South Dakota		39.68					177.41	137.73		177.41
TOTAL MILEAGE OPERATED (Single Track).	259.90	371.51			137.62	29.21	935.97	137.73	14	906.62

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Minnesota	122.07	257.40		379.47			379.47	
Iowa	137.83	74.43		212.26		14	212.12	
South Dakota		39.68		39.68			39.68	
TOTAL MILEAGE OWNED (Single Track).	259.90	371.51		631.41		14	631.27	

MILEAGE—STATE OF MINNESOTA.

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	122.07	257.40				10.11	389.58			379.47
Miles of second track,	9.92					10.11	* 20.03			9.92
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	63.31	34.44				4.40	102.15	3.23	3.34	94.41
TOTAL MILEAGE OPERATED (ALL TRACKS).	195.30	291.84				24.62	511.76	3.23	3.34	483.80

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF MINNESOTA.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	122.07	257.40				10.11	389.58			379.47
TOTAL MILEAGE OPERATED (SINGLE TRACK).	122.07	257.40				10.11	389.58			379.47

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF MINNESOTA.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	122.07	257.40		379.47			379.47	
TOTAL MILEAGE OWNED (SINGLE TRACK).	122.07	257.40		379.47			379.47	

67 B

TAXES AND ASSESSMENTS OF ALL KINDS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Minnesota,				12447458				12447458
Iowa	2660000							2660000
South Dakota	405000							405000
TOTAL,	3065000			12447458				15512458

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
D M & Ft D RR	2150000							2150000
TOTAL,	2150000							2150000

United States of America.

Circuit Court of the United States, District of Minnesota. Third Division.

I, Louise B.Trott, Clerk of said Circuit Court, do hereby certify and return to the Honorable, The Supreme Court of the United States, that the foregoing, containing 1400 pages of testimony,numbered consecutively from 1 to 1400 inclusive and one volume of Complainants' Exhibits containing 201 pages and one Volume of Defendants Exhibits containing 83 pages, is a true and complete transcript of the printed testimony and complainants and defendants exhibits and abridged reports to the State of Minnesota for the years 1907, 1908 and 1909,and of the whole thereof, as appears from the original records and files of said Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this 10th day of May A.D.1911.

Louise B. Trott

Clerk.

Edmund S. Durment (Mr. George T. Simpson was with them on the briefs), and now after consideration,

It is ordered, adjudged and decreed:

SECTION 1. That the findings and report of the Master be, and the same are, confirmed and the exceptions thereto are overruled.

562 SECTION 2. That the Acts of the Legislature of the State of Minnesota approved April 4, 1907, and April 18, 1907, respectively, and each of them, and the said Order of the Railroad and Warehouse Commission of the State of Minnesota of September 5, 1906, recited in the bill of complaint, operate as a burden upon and an interference with, a regulation of and an unjust discrimination against commerce among the states conducted and carried on, over and upon the lines of railway of the defendant, the Minneapolis & St. Louis Railroad Company, and said acts and order are and each of them is, confiscatory and constitutes an attempt to deprive the complainants and the said Railroad Company of his and its property without due process of law and to deny him and it the equal protection of the law, and to impose upon said Railroad Company and its officers, agents and employés unjust, severe and grossly excessive fines and penalties amounting to a denial of the equal protection of the law and therefore said acts and order are, and each of them is, hereby declared to be in violation of the Constitution of the United States and are, and each of them is, void and of no effect so far as the said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés are concerned, and that said Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employés, be, and they are, and each of them is, hereby permanently enjoined and restrained from continuing to observe or keep in force the tariffs fixed by the said order of September 6, 1906, or the passenger rates set forth and prescribed in said Act of April 4, 1907, or from publishing or adopting the tariffs, rates or charges set forth and prescribed in said Act of April 18, 1907, or from reducing its tariffs, rates and charges set forth in said act.

SECTION 3. That said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples
563 and Charles E. Elmquist, constituting the Railroad and Warehouse Commission of said State, be, and they are, and each of them is, hereby permanently enjoined and restrained from any attempt to compel the said Railroad Company to continue to observe, publish, post or put in force the rates, tariffs and charges prescribed by the said order of September 6, 1906, and that they are, and each of them is, further permanently restrained and enjoined from taking any action, step or proceeding against said Railroad Company, or any of its officers, directors, agents and employés to enforce any fines, penalties or punishments for the violation by them of said order of September 6, 1906.

SECTION 4. That said George T. Simpson, the Attorney General aforesaid be, and he is, hereby enjoined and restrained from taking or causing to be taken any action, step or proceeding against the

said Railroad Company, or its officers, directors, agents or employés to enforce the penalties and punishments specified in said acts of April 4, 1907, and April 18, 1907, or either of them.

SECTION 5. That the complainant recover of the defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad and Warthouse Commission of said State — Dollars, the costs of this suit which shall be hereafter taxed and inserted herein, and that the complainant have execution therefor.

SECTION 6. This decree shall take effect and be in force on and after the first day of June, A. D. 1911.

WALTER H. SANBORN,
United States Circuit Judge.

Let the foregoing decree be filed, rendered and entered of record this April 8th, 1911.

WALTER H. SANBORN,
United States Circuit Judge.

564 (Endorsed:) Decree. Ent. T. M. Vol. 43, p. 161, etc. Filed, Mar. 8th, 1911. Louise B. Trott, Clerk.

565 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, December Term, A. D. 1910.

MAY 2ND, 1911.

Tuesday morning—Court opened pursuant to adjournment.

Present:
Hon. Walter H. Sanborn, Circuit Judge.
Louise B. Trott, Clerk.

* * * * * * *

Equity No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY et al.

Motion.

Now comes the defendant, Minneapolis & St. Louis Railroad Company, and represents to the court that the preparation of new tariffs to comply with the injunction cannot be completed by the first day of June, the date fixed by decree, but will necessarily require until on or about the first day of July A. D. 1911.

Wherefore, defendant moves that the decree be modified by making it effective on the first day of July instead of the first day of June A. D. 1911.

GEO. W. SEEVERS,
For Minneapolis & St. L. R. R. Co.

St. Paul, Minn., May 2, 1911.

The within motion came on for hearing before the Court on the second day of May 1911 before the order was entered granting the appeal. The Court after hearing counsel for defendant Railroad Company and Edward T. Young and Thomas D. O'Brien, counsel for the other defendants,

Ordered, that the motion be, and the same hereby is, granted.

May 2, 1911. WALTER H. SANBORN,
U. S. Circuit Judge.

566 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes, *May* December —, A. D. 1910.

MAY 2ND, 1911.

Equity No. 857.

DAVID C. SHEPARD

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), E. A. Evarts, O. J. Whiteman, J. Rumsey Reeve, Achille Michaud, Charles Michaud, and Adolph Michaud.

Equity No. 858.

EMMA B. KENNEDY, ROBERT ELIOT TOD, ROBERT W. DE Forest, and William Stewart Tod, Executrix and Executors, Respectively, of the Will of John S. Kennedy, Deceased, and Henry F. Dimock

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum.

Equity. No. 870.

HENRY A. JAMES

vs.

GREAT NORTHERN RAILWAY COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young), Walter Scott, H. P. Webb, John Palm, L. Larson, Tom Gunness, and S. S. Glarum

Consolidated.

Equity. No. 862.

WILLIAM SHILLABER

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, Charles E. Elmquist (Substituted in Place of William E. Young).

This day come the parties to these causes by their respective solicitors, Messrs. How, Butler & Mitchell and Hale Holden appearing on

behalf of all the complainants, Mr. Charles W. Bunn appearing on behalf of the defendant Northern Pacific Railway Company, Messrs. E. C. Linley, R. A. Jackson appearing on behalf of the Great Northern Railway Company, and George W. Seevers, appear-
567 ing on behalf of the defendant Minneapolis & St. Louis Railway Company, Messrs. Edward T. Young and Thomas D. O'Brien appearing on behalf of all the other defendants.

Whereupon Mr. Edward T. Young makes application to the Court to be allowed to file an appeal in each of the above entitled causes and presents a bond for costs in the sum of Five Hundred Dollars ($500.00), in each cause, and moves the Court to have the injunctive portion of the decrees suspended until the further order of this Court, or until the coming down of a Mandate from the Supreme Court of the United States.

Mr. Pierce Butler argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the complainants.

Mr. Charles W. Bunn argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the Northern Pacific Railway Company.

Mr. Edward T. Young replies and argues further for the allowance of the appeal and motion to suspend the injunctive portion of the decrees on behalf of the other defendants.

Mr. Hale Holden argues in opposition to the application of the appeal and motion to suspend the injunctive portion of the Decrees on behalf of the complainants.

Mr. Thomas D. O'Brien argues in reply and conclusion for the allowance of the appeal and suspension of the injunctive portion of the decrees on behalf of the other defendants.

Whereupon, after hearing the arguments and statements of the solicitors for the respective parties hereto and being fully advised in the premises, upon due consideration thereof, it is by the Court ordered that said appeals be allowed and the bonds in the sum of Five Hundred Dollars each, in each case be and they hereby are approved, and that the motion to suspend the injunctive portion of the Decrees be and the same hereby is denied.

* * * * * * *

A true record.
Attest:

LOUISE B. TROTT, *Clerk.*

568 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Stipulation.

In accordance with the stipulation entered into and made of record in open Court during the argument of this cause, before Hon. Walter H. Sanborn, Circuit Judge, reading "that the annual reports made by the three railway companies involved in these cases to the State of Minnesota for the years 1907, 1908 and 1909, may be transcribed and filed and made a part of the record in the case", it is

Agreed, that the abridged copies of the reports of the Minneapolis & St. Louis Railroad Company to the State of Minnesota for said years herewith deposited with the Clerk, may be filed as full compliance with said stipulation, and in lieu of the entire reports of said Company for said years. Those portions of said reports omitted are agreed to be immaterial to any of the issues involved in this case.

Dated April 27, 1911.

E. T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Defendants, Simpson, Staples, Mills, Elmquist et al.

JARED HOW,
PIERCE BUTLER,
Solicitors for Complainants.

(Endorsed:) Stipulation to file Abridged copies of Reports of 1907, 1908 and 1909. Filed May 2, 1911. Louise B. Trott, Clerk.

569 United States Circuit Court for the District of Minnesota, Third Division.

Term Minutes December Term, A. D. 1910.

MAY 2ND, 1911.

Equity. No. 862.

WILLIAM SHILLABER
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted in Place of William E. Young).

Order.

Upon reading the stipulation of the parties to this cause this day filed.

It is ordered, That the abridged copies of the reports of the Minneapolis & St. Louis Railroad Company to the State for the years 1907, 1908 and 1909, deposited with the Clerk of this Court, be filed and made a part of the record in this cause in accordance with the stipulation of the parties entered into in open Court during the final argument of this cause, and in lieu of complete copies of said reports.

Dated May 2, 1911.

WALTER H. SANBORN,
United States Circuit Judge.

The Abridged copies of the Reports for the years 1907, 1908 and 1909 referred to in the foregoing Stipulation and Order are returned with this return, but are certified separately.

570 *The abridged copies of the Reports for the years 1907, 1908 and 1909 referred to in the foregoing stipulation and order are returned with this Return, but are certified separately.*

571 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

To the above-named complainant:

Please take notice that on the Second day of May, 1911, at two o'clock P. M. at the District Court Room in the Federal Building, in

the City of St. Paul, Minnesota, the undersigned defendants will apply to Honorable Walter H. Sanborn, Judge of said Court, for allowance of an appeal from the judgment and decree in the above entitled action entered on the 8th day of April, 1911, and at the same time and place the undersigned defendants will ask that an order be entered in said cause postponing the taking effect of the injunctional part of said decree so far as Chapter 97 of the General Laws of Minnesota for 1907 and the orders of the Railroad and Warehouse Commission prescribing class rates, as particularly referred to in the complaint, are concerned, until the further order of this Court or of the Supreme Court of the United States.

Respectfully,

GEORGE T. SIMPSON,
IRA B. MILLS,
CHARLES F. STAPLES, AND
CHARLES E. ELMQUIST,
By EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Their Solicitors.

(Endorsed:) Notice of Petition on Appeal. Filed May 4, 1911, Louise B. Trott, Clerk.

572 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE R. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Now come the above named defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, and allege that they are advised and verily believe that they are aggrieved by the decree made and entered in said cause on the 8th day of April, 1911, adjudging and decreeing that the legislative acts and orders of the Railroad & Warehouse Commission of the State of Minnesota involved in said cause are, and each of them is, void and of no effect and violative of the constitution of the United States, and adjudging and decreeing that these defendants be permenently enjoined and restrained from any attempt to compel the observance and operation of the rates and charges prescribed by said legislative acts and orders of said Commission, and thereupon have appealed from said decree to the Supreme Court of the United States of America.

That these defendants heretofore demanded of the other defendants named in this cause who have appealed therein that they join in this appeal and duly notified each of said other defendants
573 of the time and place where this petition would be presented, as more fully appears from said original notice and proof of service thereof, which is herewith presented and filed in this court.

Therefore, these defendants pray that said appeal be allowed and that a transcript of the records, proceedings and papers upon which said order was based and made be duly authenticated and transmitted to said Supreme Court of the United States, and with this, their petition for the allowance of said appeal, these defendants, said petitioners, do hereby file an assignment of errors which they will assert, rely upon and urge in support of their said appeal in said Supreme Court of the United States.

And your petitioners further pray that upon the allowance of this appeal said decree so appealed from and its operation be suspended until the further order of this Court or until the order of said Supreme Court of the United States.

Your petitioners herewith present a bond of appeal in the sum of Five Hundred ($500.00) Dollars duly executed upon their behalf which they pray be approved of, and your petitioners will ever pray.

EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Petitioners.

(Endorsed:) Petition for Allowance of Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

574 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Order Allowing Appeal.

On this Second day of May, 1911, at two o'clock P. M. the above named defendants George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist presented to the Court a joint petition asking for the allowance of an appeal to the Supreme Court of the United States from the judgment and decree entered in said action in this Court on the 8th day of April, 1911, and also asking that until the further order of this Court, or of the Supreme Court of the United States, the injunctional part of said decree be suspended as to the class and passenger rates involved in this litigation. It was made to appear that a notice of the time and place of the presentation of this application had been duly served upon the counsel for complainant, and upon counsel for all the other defendants who had appeared in said action. Edward T. Young and Thomas D. O'Brien appeared as counsel for petitioning defendants; Messrs. How, Butler & Mitchell appealed as counsel for said complainant; George W. Sievers
575 appeared as counsel for Minneapolis & St. Louis Railroad Company, and no other of the parties appeared. After hear-

ing counsel both upon the question of allowing said appeal and suspending the effect of said decree during the pendency of said appeal:

It is ordered That said appeal be and the same is hereby allowed as prayed in said petition and the bond upon said appeal conditioned for the payment of the costs thereof in the sum of Five Hundred ($500) Dollars is approved.

It is further ordered That the application of said appealing defendants for a suspension of the injunctional part of the decree heretofore entered herein be and the same is hereby denied.

Dated at St. Paul, Minnesota, this Second day of May, A. D. 1911.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order Allowing Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

576 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted for Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted for William E. Young), Defendants.

Assignments of Error.

Now come the above named defendants George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, and say there is manifest error in the record of the proceedings and in the decree in the above entitled cause in this, to-wit:

Said Court erred in finding and decreeing "that the acts of the Legislature of the State of Minnesota, approved April 4, 1907, and April 18, 1907, respectively, and each of them and the orders of the Railroad & Warehouse Commission of the State of Minnesota of September 6, 1906, and May 3, 1907, respectively, and each of them, recited in the bill of complaint, operate as a burden upon and an interference with a regulation of and an unjust discrimination against commerce between the states conducted and carried on over and upon the lines of railway of the defendant Northern Pacific Railway Company."

The foregoing part of the decree rests upon certain erroneous findings of fact and conclusions of law made by the Master and upheld by the Court, in each and every one of which there is manifest error in the following particulars, to-wit:

a. The Court erred in ignoring the fact that commerce was divided into the two distinct classes of interstate and intrastate, by the commerce clause of the Federal Constitution, whereby the power to

regulate the former class was conferred upon Congress, the power to regulate the latter being left in the states.

b. The Court erred in assuming that the respective constitutional powers of the states and the Nation over commerce can be enlarged or contracted by the similarity or dissimilarity of the con-
577 ditions affecting interstate and intrastate commerce in any group of adjacent states.

c. The Court erred in holding that interstate rates are presumed to be reasonable simply because the schedules — filed by the carrier with the interstate commerce commission, and that the power of the state to regulate its internal commerce can be exercised only to the extent of making intrastate rates harmonize with interstate rates in the same field, whether the interstate rates are reasonable in fact or not.

d. The Court erred in holding that there is any legal relation between interstate and intrastate rates except that arising out of the requirement that when rates are fixed on either class by the sovereignty having control thereof, such rates must be reasonable in and of themselves without regard to the earnings of the carriers on the other class.

e. The Court erred in holding that conditions affecting interstate and intrastate business were similar and that the rates on the two constitutional classes were relatively fair and equal in the territory comprising Wisconsin, Minnesota, North & South Dakota, before the rates here involved were prescribed, first because such finding is immaterial in determining the governmental power of this state, and secondly because such findings are not supported by, but are contrary to the evidence.

578 *f.* The Court erred in holding that the provisions of the interstate commerce act forbidding discrimination between localities in interstate commerce, is violated when intrastate rates to a given point differ from interstate rates for practically equal distances to the same point, though the intrastate rates may be fair and reasonable in and of themselves and the interstate rates may be in fact unfair and unreasonable in and of themselves.

g. The Court erred in disregarding the proof of peculiar conditions in the way of home markets which distinguish the internal commerce of Minnesota from the intrastate commerce of adjacent states.

h. The Court erred in holding the principle upon which the schedules involved were constructed, was erroneous because such schedules were made on exactly the same principle as the distance and terminal tariffs which had been long maintained by the companies themselves, and for the further reason that the making of schedules is a legislative question, the courts being concerned only with the sufficiency of the revenue produced thereby.

579 II.

The Court erred in finding and decreeing "That said legislative acts and orders are, and each of them is, confiscatory and constitute an attempt to deprive the complainant and the said Railway Company

of their and its property without due process of law, and to deny them and it the equal protection of the law, and that each of said acts and orders is violative of the constitution of the United States, and are, and each of them is, void and of no effect."

The foregoing part of the decree is based upon certain findings of fact and conclusions of law made by the Master, and upheld by the Court, in each of which the Court committed manifest error in the following particulars:

1. The Court erred in finding and decreeing that the value of railroad property employed in the public service is to be determined solely by estimating the cost of reproducing the same.

2. The Court erred in holding and basing its findings of value upon an estimate of the cost of reproduction which left out of consideration the conditions and circumstances under which the rights of the railroad company in the lands used by it were originally acquired, the amount originally expended in acquiring such rights, and in constructing and equipping the road, and the amount since expended by the railroad company out of capital in permanent improvements, and the amount expended for such permanent improvements out of earnings.

3. The Court erred in basing its findings of value on an estimate which excluded entirely the character, and the face and market value of the stocks and bonds of the company.

4. The Court erred in basing its findings of fact as to value on an estimate which entirely ignored the character of the railroad as a public highway, and wholly failed to distinguish between the value of the fee title of the land and the easement therein owned and used by the railroad company.

5. The Court erred in basing its findings of value on an estimate of the cost of reproduction founded entirely upon arbitrary assumptions governed by no fixed or uniform rules.

580 6. The Court erred in basing its findings of value solely upon an estimate of the cost of reproduction which nullifies all the laws against the fictitious capitalization of railroads, capitalizes permanent improvement made out of earnings, and also capitalizes the growth and industrial development of the country by assigning a value to the railroad easement in land, based on present market value of adjacent private property.

7. The Court erred in finding that the value of property devoted to the use of the public can be ascertained by a method based upon the imaginary obliteration and "reproduction" thereof, especially as to rights in land, and in failing to find and hold that the maximum basis upon which a railroad is entitled to a reasonable return over and above the cost of maintenance and operation, is the actual investment made in acquiring its rights in the necessary land, and in constructing and equipping the road, and in making the permanent improvements thereof which were paid for out of capital.

8. The Court erred in finding that the value of a railroad easement in land acquired in the past can be correctly determined by taking the present market value of the fee in adjacent land and increasing it by an arbitrary element called "railroad value" and

again increasing this by a fixed multiple of itself to cover the constructive severance damages. The Court also erred in holding that the value of railroad property can be determined upon the many arbitrary bases embodied in the method upheld by it, such as allowances for imaginary contingencies and legal expenses, and interest on the cost of the road during an arbitrary and imaginary period of reconstruction.

9. The Court erred in not dismissing the complaint because of the total failure of the complainant to furnish any evidence of the original cost of acquiring constructing or improving any part of the property, and for the total failure of the complainant (as shown by the Master's ninth finding) to furnish any proof of the face or market value- of the stocks and bonds which represent the part of the total investment devoted to the public service, separate from the other profit producing property owned by the Company and acquired by the same capitalization.

10. The Court erred in apportioning the value of the property used in the state between passenger and freight business on the gross earnings basis, and apportioning the common cost on the train and engine mileage bases.

11. The Court erred in apportioning the value assigned to the freight and passenger business respectively between interstate and intrastate traffic on the gross earnings basis.

581 12. The Court erred in basing its findings as to the relative cost of handling interstate and intrastate business on the opinions of witnesses produced by respondent without any proof on behalf of respondent of the actual facts out of which the differences in relative costs arise, after it was shown by appellant that such relative costs can be accurately ascertained by proper cost accounting.

13. The Court erred in rejecting the evidence given on behalf of appellants as to the relative cost of doing the inter and intra business as shown by data taken from the books of the railroad company.

14. The Court erred in not including in the income of the railroad company all net income derived from other property acquired by the same capitalization and held and used by the company for profit.

15. The Court erred in including in the value of the railroad property cost of reproducing the property of other independent corporations in which the railroad company held stock.

16. The Court erred in finding that the cost of handling intrastate freight business is two and one half times the cost of handling intrastate freight business and the cost of handling intrastate passenger business is fifteen per cent greater than the cost of handling interstate passenger business, for the reason that such findings are wholly unsupported by and are contrary to, the evidence.

17. The Court erred in failing to require respondent to furnish proof of the total quantity of freight carried on through trains and on local trains respectively over the operating divisions of the road wholly or partly within the state, and the haulage cost of the local trains and the through trains separately, and the respective quantities of interstate and intrastate traffic hauled on said local and

through trains, for the purpose of furnishing a basis for determining by compitation the relative cost of the inter and intra business, and the Court erred in failing to dismiss the action for failure of complainant to furnish such proof.

18. The Court erred in the matter of determining the difference in the cost of handling interstate and intrastate traffic in failing to limit the extra cost to the transportation expenses, that being the only grand division of the "cost of operation" in which any difference can exist.

19. The Court erred in refusing to dismiss the case for failure of proof by the complainant as to the actual value of the property employed in the service in the state, and the actual value of the portion thereof employed in intrastate business, and for a total want of proof of the cost of handling such intrastate business or any data from which the same could be deduced.

582 20. The Court erred in holding that the income from the stock of an express company, owned by and operating over the railroad, should not be added to other income for the purpose of determining the adequacy of such total income.

21. The Court erred in holding that the legal presumption of reasonableness in favor of the rates was overcome by the finding of the Master that they were unreasonable.

22. The Court erred in finding that a railroad is entitled to a return of seven per cent net on the value of the property devoted to the public use.

23. The Court erred in holding that, after the railroad company had accepted and put the merchandise rates and the passenger rates into effect they can be enjoined at the suit of this complainant as inadequate without any application by the Railroad Company to the Railroad and Warehouse Commission for increased rates, in violation of the law of the state requiring such application to be made before existing rates can be raised.

24. The Court erred in adjudging that costs should be taxed against these defendants, who were sued herein solely because of their respective official positions and not because of any personal interest, or any act committed or threatened by them as individuals.

25. The Court erred in finding and decreeing that the laws and orders involved are, or that either of them is, void on account of the penalties provided for the violation thereof.

Wherefore said appellants pray that for each of the said errors above specified said — and Decree be reversed.

EDWARD T. YOUNG,
THOMAS D. O'BRIEN,
Solicitors for Appellants.

(Endorsed:) Assignments of Error & Prayer for Reversal. Filed May 4, 1911. Louise B. Trott, Clerk.

583 United States Circuit Court, District of Minnesota, Third Division.

WILLIAM SHILLABER, Complainant,
vs.
MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (Substituted in Place of Edward T. Young), Ira B. Mills, Charles F. Staples, and Charles E. Elmquist (Substituted in Place of William E. Young), Defendants.

Bond of Appeal.

Know all men by these presents, That, we George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist, as principals, and the United States Fidelity & Guaranty Company of Baltimore, Maryland, as Surety, are held and firmly bound unto the above named complainant in the sum of Five Hundred ($500) Dollars, lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this Second day of May, A. D. 1911.

The condition of the above obligation is such, That, Whereas, the judgment and decree of said Court was entered in the above entitled action on the 8th day of April, 1911, adjudging that the Acts of the Legislature of the State of Minnesota, approved April 4, 1907,
584 and April 18, 1907, respectively, and each of them, and the Orders of the Railroad & Warehouse Commission of the State of Minnesota of September 6, 1906, and of May 3, 1907 respectively, and each of them, is void and of no effect and enjoining the Minneapolis & St. Louis Railroad Company, its officers, directors, agents and employees, and each of them, from continuing to observe or keep in force the tariffs fixed by said Orders and Acts, and each of them, and enjoining the said George T. Simpson, Attorney General of the State of Minnesota, and Ira B. Mills, Charles F. Staples and Charles E. Elmquist, constituting the Railroad & Warehouse Commission of said state from any attempt to compel the said Railroad Company to continue to observe, publish, post or put in force the rates, tariffs and charges described in said Orders and Acts and from taking any action, step or proceeding against said Railroad Company or its officers, directors, agents or employees to enforce any fines, penalties or punishments for violation of said Orders and enjoining the said George T. Simpson, as Attorney General aforesaid, from taking any action, step or proceeding against said Railroad Company, its officers or directors, agents or employees to enforce the penalties and punishments specified in said Acts and adjudging the cost of said suit against these appellants.

And whereas The above named principals of this bond have appealed from the said judgment and decree to the Supreme Court of the United States.

Now therefore if said appellants shall prosecute their appeal to effect and if they fail to make their appeal good shall answer and pay all costs, then this obligation to be void, otherwise to remain in full force and effect.

In testimony whereof the above named principals have *have*
584½ hereunto set their hands and seals, and the said Surety, the United States Fidelity & Guaranty Company of Baltimore, Maryland, has caused this bond to be executed by its proper officer thereunto duly authorized, the day and year above written.

GEORGE T. SIMPSON. [SEAL.]
IRA B. MILLS. [SEAL.]
CHARLES F. STAPLES. [SEAL.]
CHARLES E. ELMQUIST. [SEAL.]

[Seal U. S. Fidelity & Guaranty Co.]

THE UNITED STATES FIDELITY
& GUARANTY CO., [SEAL.]
By CHARLES B. COLEMAN,
Attorney in Fact.

In presence of
THOMAS D. O'BRIEN,
As to Geo. T. Simpson.
C. F. McNALLY,
As to All.
A. L. FLINN,
As to Mills, Staples & Elmquist.

585 STATE OF MINNESOTA,
County of Ramsey, ss:

Before me, on this 3rd day of May, A. D. 1911, personally appeared George T. Simpson to me known to be one of the persons who signed and executed the foregoing bond and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] C. F. McNALLY,
Notary Public, Ramsey County, Minnesota.

My commission expires January 1st, 1915.

STATE OF MINNESOTA,
County of Ramsey, ss:

Before me, on this 4th day of May, A. D. 1911, personally appeared Ira B. Mills, Charles F. Staples and Charles E. Elmquist, to me known to be the same persons who signed and executed the foregoing bond and each acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] C. F. McNALLY,
Notary Public, Ramsey County, Minnesota.

My commission expires January 1st, 1915.

586 STATE OF MINNESJTA,
County of Ramsey, ss:

On this 4th day of May, 1911, before me, a Notary Public within and for said County and State, personally appeared Charles B. Coleman, to me personally known, who being by me duly sworn upon oath did say that he is the Agent and Attorney-in-fact of and for the United States Fidelity and Guaranty Company, a corporation of Baltimore, Md., created, organized and existing under and by virtue of the laws of the State of Maryland; that the corporate seal affixed to the foregoing within instrument is the seal of said Company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Charles B. Coleman did acknowledge that he executed the said instrument as the free act and deed of said Company.

EDITH M. COOKE,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

My Commission expires June 1, 1913.

(Endorsed:) Bond on Appeal. Filed May 4, 1911. Louise B. Trott, Clerk.

587 UNITED STATES OF AMERICA:

Circuit Court, Eighth Circuit.

Citation.

United States of America to William Shillaber, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court *of* at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the District of Minnesota, Third Division, wherein George T. Simpson, Ira B. Mills, Charles F. Staples and Charles E. Elmquist are appellants and you are defendant in error to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Judge of Circuit Court of the United States, District of Minnesota, this 2nd day of May, A. D. 1911.

WALTER H. SANBORN,
Judge of Circuit Court of the United States,
District of Minnesota.

Due Service of the foregoing Citation by Copy at St. Paul, Minnesota, is hereby admitted this 2nd day of May, 1911.

JARED HOW,
PIERCE BUTLER,
WILLIAM D. MITCHELL,
Solicitors for Defendant in Error.

[Endorsed:] Entered. No. 862. Equity. United States Circuit Court, District of Minnesota, 3d Division. William Shillaber vs. Minneapolis & St. Louis Ry. Co. et al., Defendant-. Citation. Filed May 4, 1911. Louise B. Trott, Clerk.

588 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Louise B. Trott, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing, consisting of 588 pages, numbered consecutively from 1 to 588 inclusive, is a true and complete transcript of the Records, Process, Pleadings, Orders, Final Decree and all other proceedings in said cause, (except the printed copies of Testimony, consisting of 3 Volumes and one Volume of complainants' and one volume of defendant's Exhibits, also Copies of Abridged Reports to State of Minnesota for 1907-1908 and 1909—which are certified separately and returned herewith),—and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this 10th day of May, A. D. 1911.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

LOUISE B. TROTT, *Clerk.*

Endorsed on cover: File No. 22,677. Minnesota C. C. U. S. Term No. 601. George T. Simpson et al., appellants, vs. William Shillaber. Filed May 15th, 1911. File No. 22,677.